THE

PRINCIPLES AND PRACTICE

OF

FIRE INSURANCE

IN THE UNITED KINGDOM

BY

FRANK GODWIN

LATE HOME FIRE MANAGER, THE PHŒNIX ASSURANCE COMPANY

SEVENTH EDITION

BY

KENNETH C. WOODS, F.C.I.I.

(PHŒNIX ASSURANCE COMPANY, LTD.)

LONDON

SIR ISAAC PITMAN & SONS, LTD.

1947

First Edition . .	1920
Second ,, . .	1925
Third ,, . .	1930
Fourth ,, . .	1933
Fifth ,, . .	1936
Sixth ,, . .	1942
Reprinted . . .	1944
Seventh Edition . .	1947

SIR ISAAC PITMAN & SONS, LTD.
PITMAN HOUSE, PARKER STREET, KINGSWAY, LONDON, W.C.2
THE PITMAN PRESS, BATH
PITMAN HOUSE, LITTLE COLLINS STREET, MELBOURNE
UNITEERS BUILDING, RIVER VALLEY ROAD, SINGAPORE
27 BECKETTS BUILDINGS, PRESIDENT STREET, JOHANNESBURG

ASSOCIATED COMPANIES
PITMAN PUBLISHING CORPORATION
2 WEST 45TH STREET, NEW YORK
205 WEST MONROE STREET, CHICAGO

SIR ISAAC PITMAN & SONS (CANADA), LTD.
(INCORPORATING THE COMMERCIAL TEXT BOOK COMPANY)
PITMAN HOUSE, 381-383 CHURCH STREET, TORONTO

BOOK PRODUCTION WAR ECONOMY STANDARD

THIS BOOK IS PRODUCED IN
COMPLETE CONFORMITY WITH THE
AUTHORIZED ECONOMY STANDARDS

MADE IN GREAT BRITAIN AT THE PITMAN PRESS, BATH
D7—(B.1923)

PREFACE

It is desirable to point out that this book is written, primarily, for students who are candidates for the examinations of the Chartered Insurance Institute. This means that the syllabus of the Institute for the subject of "Fire Insurance Principles and Practice" has been followed rather more closely perhaps than would otherwise have been the case; but at the same time an endeavour has been made to deal with principles and practice generally by a discussion, at such length as space permits, of the elements of other examination subjects, Fire Insurance Law, Policy-Drafting, Loss Apportionments, etc. It is hoped, therefore, that the book will provide a fairly comprehensive introduction to the study of Fire Insurance, not only for students but for others who are interested in the business.

Nominated by the late Mr. Frank Godwin to revise his work for this the seventh edition, the author pays tribute to his former chief, and acknowledges with gratitude the guidance and constructive criticism of his colleagues.

He is indebted also to many of the standard works on Fire Insurance, to authors of excellent articles in the Institute Journal, and to the Insurance Press.

K. C. W.

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PUBLISHED BY

PITMAN

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CHAPTER I

FIRE WASTE—ORIGIN AND NATURE OF FIRE INSURANCE

WHEN Prometheus stole fire from the gods and bestowed it on mortal man the Industrial Age was undreamt of, and as man had little to lose but his life it is probable that he regarded the gift as unexceptionable. Anyone who has spent a cold wet night in the open and succeeded, after many efforts, in getting a fire going at dawn will be in a position no doubt to appreciate his feelings. It would not be until he began to build and accumulate that the drawbacks of the divine element began to assert themselves. They have continued to do so ever since, and it is rather surprising that after so many centuries of progress in other directions the complete mastery of fire still remains to be achieved and the products of human skill and energy continue to be liable, in varying degree, to destruction or damage by the escape of fire from its proper control. Considered economically such damage is dead loss to the community, for replacement is effected only by efforts and expenditure diverted from strictly productive work. (It is true that there have been cases where fire has forced the hands of a people into hygienic and aesthetic reforms, otherwise unattainable, but such compensations are increasingly rare in occurrence.)

Fire Waste.

Until the terrible destruction in London and other large centres which accompanied the enemy air assaults during the second World War, the general public has been accustomed to view with equanimity the very heavy loss sustained by the community from the destruction of property by fire. Thus in 1930 the leading British companies alone paid nearly £30,000,000 in losses, whilst in 1940, the next-worse year, the amount was over £25,000,000.[1] Those who have experienced modern air attacks or have seen the enormous

[1] This £25,000,000 is quite apart from war damage. The total destruction in 1940, insured loss plus uninsured loss, will probably never be more than approximately known.

damage caused by them may be inclined lightly to dismiss the annual toll of fire waste in normal times. It is probable that general indifference to the subject will return. No doubt a hazy impression that no one suffers so long as there is insurance behind the loss accounts for a good deal of this apathy. Needless almost to state the fallacy of such a line of thought; the premiums paid for fire insurance are an unproductive tax on all to make good the vast leakage of wealth involved in the fire losses of individuals. Insurance, beneficent as its effect is on individual enterprise and security, is of little avail to counteract fire waste; in fact it actually encourages it by offering an inducement to the dishonest to burn their property in order to realize the cash value for which it is insured. In one direction, however, as we shall see later on, the practice of fire insurance does tend greatly to reduce waste, namely in the system of penalizing bad features of risk by additional rates and of allowing discounts from premiums as inducements for superior construction, the provision of extinguishing appliances, etc. The gain secured by this may well be set against the sinister feature on the other side of the account.

Physical Hazard.

Fire waste is the result of many causes which can all be summed up in one or other of two categories—those due to physical hazard and those due to moral hazard. Among the causes due to physical hazard the principal are—

Buildings or goods of an inflammable nature.

Dangerous processes.

Defective systems of heating, lighting and power.

Lack of division, vertical or horizontal, by which the extension of a fire may be checked.

Lack of means to extinguish fires.

Moral Hazard.

Moral hazard is of a much less tangible nature, and we shall see that, carefully as we may scheme to eliminate the presence of physical hazard, we still have to deal with the factor of losses caused either by the deliberate acts of "fire-raisers" or by carelessness, or acquiescence in carelessness, on the part of large sections of insured persons and others. The ramifications of moral hazard

are not sufficiently realized even by those engaged in fire insurance, many of whom apparently fail to see how the prevalence of this feature of risk nullifies all attempts to place the business on a strictly scientific basis, as has been done in the case of Life Assurance. Too often the idea prevails that moral hazard begins and ends with the probability, or otherwise, that the insured will set fire to his goods to realize the insurance money. The following are some further practices which should properly be ranged in the same category—

Arson on the part of others than the insured, e.g. co-tenants, employees who are malicious or who wish to cover traces of theft, political and other fanatics, and persons looking for a reward on giving information as to a fire or assistance in its extinction.

The wilful neglect by the insured to maintain proper precautions and means of extinction, or neglect to make the best use of the latter, is a passive form of dishonesty which is, without doubt, largely responsible for the great increase in fire waste, a constant phenomenon in times of bad trade. When business is good a fire is an unwelcome interruption, when it is bad a fire may be a welcome solution of the difficulties of embarrassed finance. This must not be thought too cynical a view—the correspondence between stagnation in trade and bad loss experience in fire insurance is too well-established to admit of doubt.[1] Moreover, it must be remembered that even in bad years the percentage of insured who have fires at all is extremely small so that no general charge of bad faith is involved.

Rapacity in claims is another form of moral hazard differing but little ethically from actual dishonesty and it leaves its mark, a deep one, on the loss ratio of every company.

Then there is the element of carelessness—without criminal intent—on the part of the insured, his employees and others. This may be seen in many forms, of which perhaps the commonest are lack of supervision by the employer and the careless use of lights.

Origin of Insurance.

Such are the outstanding causes of fire waste. The system of insurance is a natural result and although it was not originated until centuries after commerce had become a feature of civilization

[1] See an article by Dr. D. Heron on "Business Forecasting," Vol. xvii of *Journal of London Insurance Institute.*

its success was immediate. Anyone who had any property at stake was certain to turn an ear to a proposal by which he was offered security against such a common disaster.

It was not, however, then apparent that insurance companies have as their principal *raison d'être* the responsibility of shifting the incidence of the losses from the individual to the community, and that the successful continuance of their business depends on their performance of this task in such a way as to combine security for all with equitable treatment to the individual. The pioneers, the various adventurers in the century following the Great Fire of London, necessarily ran their schemes more or less as a pure gamble. How could it be otherwise ? They had no experience to go on and their rates must have been founded on guesswork. (It is not a little remarkable, however, that some of these rates remain as standard to this day.) Their vicissitudes seem to have been very similar to those of new companies operating in our own time. Gradually the offices whose management was sound increased their business, partly at the expense of their less capable rivals but more, in those days, by the acquisition of business previously uninsured. For, unlike us, they had an almost unlimited field in that direction.

Development of Principles.

As more and more property became the subject of insurance the insurers began to find their data accumulating and a crude form of rating on results became possible, whilst the experience gained as to what constituted a desirable form of contract went hand-in-hand with the development in the Courts of Law of a code under which the contract was brought into line with the Common Law and with the interests of public policy. Gradually it became apparent to observant persons that the insurance of property against fire was not merely a speculative contract between two parties but that each transaction reacted more or less on all the others with the same insurers, that in point of fact the insurers were becoming the managers of a common fund, to which all contributed, for the reimbursement of the few who sustained losses. This mutual, or quasi-mutual, character of the business has influenced the establishment of principles under which equitable treatment is secured for the individual insured, not only by the insurers but by his

fellow-insured, who are debarred by these principles from taking any unfair advantage of the common fund. Students must keep this fact well to the front in their minds, as the whole practice of the business is influenced by it.

Having glanced thus briefly at the origin and development of fire insurance let us now examine the leading principles by which its practice is governed to-day.

The Principle of Indemnity.

In the first place all contracts of fire insurance are based on the principle of indemnity, that is to say, the insurers undertake in the event of loss or damage to the property insured to place the insured by monetary payment or otherwise in the same position as he was before the fire—neither better nor worse, but the same. (This form of contract should be contrasted with that under which a Life policy is granted—an agreement to pay a fixed sum on the occurrence of an inevitable event.) A great lawyer, Lord Chief Justice Mansfield, in delivering a judgment some 160 years ago when fire insurance was in its infancy, laid down the position as follows—

> It was very wisely established that a man should not recover more than he had lost. Insurance was considered as an indemnity only in case of a loss And therefore the satisfaction ought not to exceed the loss. This rule was calculated to prevent fraud; lest the temptation of gain should occasion unfair and wilful losses.

His dictum has never been reversed; the lapse of time and countless happenings of loss in every variety of circumstances have merely strengthened the conviction of all responsible in the matter that indemnity is the only secure foundation of such a contract. If the insured is to be permitted to make a profit out of the occurrence of a fire then two evils will be in evidence—

1. There will be an incentive to bring about the occurrence, by either active or passive means. This is not only fraudulent to the insurers and possibly dangerous to life and other property but it adds to the common loss which is involved, as we have seen, in fire waste. As the saying goes " It is against public policy."

2. As a result of (1) it will injure the offender's fellow-insured seeing that it tends by undue depletion of the accumulated fund of premiums to raise rates against the whole body of insured persons.

This principle of indemnity then has become established as the sheet-anchor of the business. Not only do all prudent underwriters give their allegiance to it but the law has continued to maintain it steadfastly and its essential soundness has been confirmed by decision after decision.

We have heard, however, in the past few years various complaints and warnings that the principle is in danger of being sapped by various modifications which have been introduced into the practice of the fire business in the case of various classes of risk, and it will be well to endeavour to ascertain what justification there is for this criticism.

Extension of the Idea of Indemnity.

It will be found that in the past it has been customary for the insurers to construe the word " indemnity " as meaning material indemnity, that is to say, that the loss insured against is loss of tangible, material, property only, anything in the nature of profit or monetary liability being ruled out. (Certain exceptions were nevertheless recognized, e.g. the covering of loss of rent, either receivable as income or payable as a liability.) It was considered, not only by the insurers, but by the Courts of Law, quite a proper and healthy thing that the insured should lose something : otherwise there was inducement to have a fire or, at any rate, lack of inducement to prevent one. There can be no doubt that this is a very sane and prudent view to take, but it does not always appeal to the insured, the vast majority of whom are honest and only desire complete protection. That they have on occasions been left dissatisfied by the settlement of losses on this system is well known to the companies, and the result has been that remedies have been offered in certain cases where the grievance has been beyond dispute. What are these cases and how far is the infraction—if any—of the principle carried ? The most important departure from the old conception of indemnity is seen in the issue of policies to cover loss of profits (sometimes known as " consequential loss "). Formerly if, say, a factory was burnt down the fullest extent of insurance was cover for the material loss sustained in the destruction of buildings, plant, and stock. For the interruption or cessation of " takings " or " turnover," with consequent loss in

profits, there was no form of compensation. Nor was there any provision for the payment of standing charges, such as debenture interest, salaries, rates and taxes, etc. The introduction of cover for these contingencies, a generation back, was met with a storm of protest and warnings. And certainly the first contracts were crude enough—usually an undertaking to pay a fixed percentage of the fire loss. But a more scientific method was soon evolved on the basis of comparison of profits, period by period, before and after the fire. It is now generally recognized that such compensation does not travel beyond an indemnity, as under a properly drafted policy there is little chance of the insured gaining an advantage by the occurrence of a fire : the worst that can happen is that the complete security offered will perhaps tend to make him less careful to guard against it.

The settlement of losses on certain kinds of merchandise has always been attended with difficulty, often due to varying customs as to trade contracts. The usual basis of settlement for merchandise is on the market price at the time of the fire (" immediately anterior to the fire " is the phrase), and in most cases this method provides a satisfactory measure of the insured's loss, having regard to the market fluctuations under which present values often bear little relation to the original cost to him. In some trades, however, it is the custom for the contract to be cancelled automatically on the occurrence of a fire. Observe the position : A contracts to purchase goods from B for £1,000, B's profit on the transaction being, say, £200. The goods remain on B's hands for a day or so, during which time a fall in prices brings their value down to £900, when a fire destroys them. Ordinarily they would be at A's risk as soon as he had contracted to purchase but under the custom of the particular trade the contract is cancelled by the fire and B finds himself with £900 of insurance as against £1,000 cash he stood to receive from A. In other words, he has lost £100 of his profit as a result of the fire and falls short therefore of complete indemnification. The hardship involved in such cases has now led to the introduction of a clause under which the contract price can be recovered and complete indemnity secured. Another instance of hardship was seen in settlement for goods whose supply is restricted, as a result of which the shortage caused by a serious fire would send the price up immediately after.

A merchant contracting one day to deliver such goods might find that by reason of a heavy fire during the night the cost of replacing them the next morning would be considerably enhanced. (A similar position has been known to arise in connection with cotton owing to heavy fluctuations in the American market during their business hours, which, of course, extend beyond the closing of our exchanges, the effect not being felt in Liverpool till the next morning's opening.) The basis of settlement on value immediately before the fire would consequently fall short of an indemnity, and a remedy has been found, either by way of a margin beyond such value or by altering the basis to that of the price at the next opening of the market.

Departures from the Principle of Indemnity.

So far we have considered modifications of contracts devised in order to secure to the insured a more complete or more consistent working of indemnity than that afforded under the ordinary terms of a fire policy. In the "valued" policy we are confronted with an arrangement, common to marine insurances and for a time introduced into fire insurances, to enable the insured to recover a fixed amount, agreed at the completion of the contract, without the necessity of furnishing any additional proof of value at the time of the loss.

The advantage to the insured, if advantage it be, arises only in the event of the property becoming a total loss, i.e. incapable of satisfactory repair or restoration. When the damage can be repaired, the repair cost, provided it does not exceed the amount insured, is the measure of the loss in the same manner as an indemnity settlement.

A "valued" policy would be harmless enough if the original valuation was subjected to periodical revisions but the expense to the insured of such a course would be prohibitive.

The result is that in total loss the basis of indemnity disappears. Take the example of a carpet purchased for £50 in 1930 and insured for that amount as an item in a "valued" policy. In 1940 after years of hard wear the insured is still entitled to claim £50 although at the time of destruction the carpet may be worth no more than £5.

Conversely, the carpet may have had little wear and due to

appreciation in value may be worth £150 in 1946, but in the absence of alteration to the sum insured, the insured's maximum recovery for loss remains at £50.

Leaving aside appreciation in value, a "valued" policy is similar in some respects to a "replacement" policy in that no account is taken of depreciation and the insured receives the equivalent in cash or in kind of "new lamps for old."

Few "valued" policies of the type described remain in force, as a subsequent development which upholds the principle of indemnity incorporates the inventory and valuation in the policy as a basis for settlement. The individual amounts are accepted by the insurer as evidence of value at the date of valuation (or subsequent revision) and no similar information need be furnished by the insured when a loss occurs.

The clause incorporating the inventory and valuation (Appendix III (*g*)) provides for reasonable allowance being made for both appreciation and depreciation in case of loss.

This is more satisfactory as amounts insured on property the insured has disposed of are available to cover subsequent purchases.

Replacement (or Reinstatement) Policies.

Soon after the War of 1914–1918, the offices were faced with a complete breach of the principle in the shape of "replacement" or "reinstatement" policies, a form of insurance under which it is possible to recover, not the value of buildings or plant as depreciated, but the cost of replacement of the property destroyed by new property of the same kind. This if applied to general practice would be indeed a radical change in the methods of the business. The circumstances which led to the departure were unique. In ordinary times well-managed concerns are in the habit of setting aside an amount annually for depreciation in buildings and plant, and if a loss occurs this provision fills the gap between the amount recoverable from insurance and the cost of new property. But in the years 1919–1920, manufacturers and others were faced with the fact that the ordinary provision was altogether insufficient. Plant in particular had deteriorated enormously by the unceasing wear and tear of war requirements, whilst the price of its replacement had soared up to two or three

times what it was in 1914. The gap between actual value and cost of replacement had therefore extended at both ends, and some heroic method of closing it became necessary. The fire companies, after some natural hesitation, agreed to alter their basis of settlement from indemnity to replacement, but hardly had the decision been taken when the situation was eased by a rapid fall in prices.

For some time the number of policies issued in no way reflected the apparent demand for them but due to rapid advances in the use of industrial machinery the tendency to grant contracts of this nature grew until to-day the wider cover is offered freely.

During the recent war "Replacement" conditions were revised completely as Government Regulations prevented all but those engaged on work of national importance from carrying out reinstatement.

Under the former conditions a loss was settled on an indemnity basis if the insured was "unable or unwilling" to effect reinstatement.

To have prejudiced the insured in these circumstances would have been unfair, and as a result it will be noted that the revised conditions (Appendix III (*h*)) provide for a time limit with possible extensions for performance of the contract.

These conditions are self explanatory but particular attention should be paid to the manner in which the condition of average applies.

We may yet see a demand spring up for the extension of the idea to non-trading classes of risk. If so, it is probable that such a demand will be met by a firm refusal, as widespread application of reinstatement terms, although perhaps resulting in fuller insurance, would strike at the very foundation of indemnity.

Good Faith.

A distinctive feature in connection with all insurance contracts is the necessity for the observance of the " utmost good faith " by both the parties. Various elements must be present in all contracts if they are to be enforceable at law. These have been enumerated as follows—

1. A communication by the parties to one another of their intention. This is offer and acceptance.

2. Legal capacity to contract on the part of the parties.

3. Certain evidence, required by law, of the intention of the parties to affect their legal position. This is form or consideration.

4. Legality and possibility as regards the subject-matter.

5. Absence of any circumstances which might show that the agreement entered into by the parties was not genuine. There must be no taint of mistake, misrepresentation or fraud.

If any one of these elements is wanting, the so-called agreement, which purported to be a contract, will be either—

(*a*) Unenforceable, i.e. valid in itself but not capable of being proved in a Court of Justice, or

(*b*) Voidable, i.e. capable of being affirmed or repudiated by one or other of the parties, according to his wishes, or

(*c*) Void, i.e. destitute of all legal effect.[1]

We shall have occasion in a later chapter to consider the particular form these elements, or several of them, assume in a fire insurance contract. For our present purpose we will note that element (5) is extended to this stipulation as to " the utmost good faith." It is equally binding on both sides but in the nature of things the proposer or insured bears much more of the onus than the insurers. The undertaking of the business is set forth in their policy or in the Common Law of the land, but the facts as to the risk to be covered are usually to be obtained only from the statements of the proposer, although the physical aspect of the risk is, in all but the more simple classes of risk, usually reported on by the Insurers' Surveyor and any facts open to his observation will be considered as fully disclosed. Other facts, however, known to the proposer and material in their bearing on the acceptability or otherwise of the business or on the degree of hazard involved, must be fully disclosed by him. It will not avail moreover for him to plead that he was unaware that a particular fact was material. One obvious reason for this is that if it were not so, such a plea would form an easy evasion. The conduct of the business without such safeguards would be practically impossible, or if not impossible, could be carried on only at greatly increased rates.

The observance of good faith is necessary throughout the term of the contract. "It is the duty of the insured and his agents, in all

[1] See Pitman's *Commercial Law*.

cases, to take all such measures as may be reasonable for the purpose of averting or minimizing a loss" (Sanford Cole, *Law of Fire Insurance*). "This is based on a broad principle of law as to measure of damage, namely that which imposes upon the claimant the duty of taking all reasonable steps to mitigate the loss, and debars him from claiming any part of the damage which is due to his neglect to take such steps" (Lord Haldane in *British Westinghouse Co.* v. *Underground*, 1912). And again "Once the fire has happened the insured must do his utmost to extinguish it" (Lord Justice Scrutton in *City Tailors* v. *Evans*, 1921).

It has been frequently said that the legal doctrine of *caveat emptor* (let the buyer look after himself !) does not apply in contracts of insurance, although this is perhaps a little misleading. In insurance it is, generally speaking, the seller—not the buyer—who has to be protected against lack of good faith.

The Necessity for Insurable Interest.

This principle, unlike that of " the utmost good faith," is not common to all kinds of insurance, but is in its strict interpretation peculiar to the Fire contract. (In theory it also applies to Marine Insurance but there are divergencies in practice.) It is indeed a logical sequence to indemnity. A person is said to have an insurable interest in the subject-matter of insurance when he stands in such a relation to it as to benefit by its existence or be prejudiced by its loss, so that if this condition is not fulfilled he does not sustain any loss on the damage or destruction of the subject-matter and any payment or compensation to him would therefore be contrary to indemnity.

The interest in a policy is the essential factor for it is the insured's interest in the property insured rather than the property itself which is the true subject-matter of the insurance (see pages 28, 33 and 35).

Other principles, such as subrogation, contribution by co-insurers and reinstatement, have been cited as elementary in fire insurance but these are, strictly speaking, legal or equitable principles of which insurers avail themselves, sometimes in support of the principle of indemnity, sometimes to obtain equitable redress. They will be dealt with in the chapter on Policy Conditions.

Summary.

We are now in a position to summarize the matters considered in the foregoing pages. We have seen then that—

Fire waste is a dead loss, economically, to the community.

Fire insurance is no cure for fire waste but is a device to shift the incidence of loss from the individual to the community.

The mutual character which fire insurance has acquired as a result of this has encouraged the growth of certain principles, under which the individual is prevented from obtaining an advantage over his fellow-insured. Considerations of public policy are also reflected in these principles, or some of them. It would, for instance, be clearly against the public interest, even supposing insurance were the exception and not the rule, to encourage fire waste by allowing an insured person to make a profit out of a fire.

Of these principles the leading one is that of indemnity, under which the fire insurance contract is construed by the Courts as an undertaking to give compensation, by cash payment or reinstatement, for the loss actually sustained—*not* to pay a fixed sum on the occurrence of the event insured against. To secure an indemnity for losses in different kinds of property various devices are adopted in drafting policies, and in some cases the original conception of indemnity as being compensation for material damage only has been extended to include consequential expenses and loss of profit incurred.

The utmost good faith between the parties is imperative. Otherwise the comparative ease with which fraud could be effected would have to be countered by costly inquiries and safeguards on the part of the insurers, with resulting increase of rates generally.

The necessity for insurable interest follows logically on the principle of indemnity.

(The necessity for good faith and for insurable interest, coupled with a stipulation that the subject-matter must be in existence at the date of effecting the contract, are "implied conditions" as distinguished from the "express conditions" dealt with in Chapter II.)

CHAPTER II

THE FIRE INSURANCE CONTRACT AND ITS CONDITIONS

THE contract contained in a fire insurance policy is an agreement by which the insurers,[1] in consideration of a suitable premium, undertake to make good by cash payment or otherwise any loss sustained by the insured[1] through damage or destruction by fire or any other peril insured of or to the property detailed and described in the policy, up to an amount not exceeding that set forth therein. It is understood that the description of the property given in the policy is correct and that all facts material to the insurers' estimate of the risk involved have been disclosed. Also that the insured's interest in the subject-matter is a legal one.

These are the leading considerations, and they embrace the principles of indemnity, good faith, and insurable interest. Other matters of agreement follow which are expressed in clauses, warranties, etc., in the descriptive matter, or in the printed conditions usually found on the back of the policy. We shall deal with them presently.

Definition of "Fire."

The definition of " fire " for the purposes, and within the meaning, of the contract is given by Messrs. Welford and Otter-Barry in their *Law of Fire Insurance* in the following very clear terms—

> To constitute a fire there are two requisites, viz.—
> 1. There must be actual fire or ignition.
> 2. The fire must be, so far as the insured is concerned, fortuitous in its origin. The contract therefore does not include within its scope every species of fire. Thus, a fire lighted for the ordinary purposes for which a fire is used, whether for cooking, warming, or manufacturing, is not, whilst confined within the usual and proper limits a fire within the meaning of the contract, seeing that there is nothing fortuitous about it. Any loss, therefore, occasioned by such a fire, whether by the burning of any property in the fire itself, or by the scorching or cracking of any property adjacent to it owing to its intense heat, if unaccompanied by ignition, is not covered by the contract, since the cause of the loss cannot be regarded as a peril insured against.

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[1] Be careful to distinguish between " Insurers " and " Insured." To use the former where the latter is intended is a very common error.

(In a later edition the authors have modified their statement as to property destroyed in an ordinary domestic fire as follows—

> The question then arises what is the position where property is accidentally burned in an ordinary fire, such as a domestic fire: the fire never breaks its bounds, but something which was never intended to burn falls or is thrown by accident into the grate and is burned. In this case, equally with the case where the fire breaks its bounds, there is an accident, and something is burned which ought not to have been burned. The only distinction between them is that in the one case it is the fire which escapes out of its proper place and comes in contact with the property destroyed, whereas in the other case it is the property which gets out of its proper place and comes into contact with the fire. This distinction does not appear to be sufficient to make any difference in the result. The object of the contract is to indemnify the insured against accidental loss by fire, and so long as the property is accidentally burnt, the precise nature of the accident seems to be immaterial. It may be, therefore, concluded that the loss in both cases falls equally within the contract.

This is good sense, and as such approved by the decision in a recent case, *Harris* v. *Poland* (1941), which related to a claim for jewellery which the plaintiff before leaving home had placed in the grate of a fireplace to defeat burglars, covering the jewellery over with sticks and coal as if ready for lighting. Later she returned home and having forgotten that she had placed the valuables in the grate lit the fire, with the result that the jewellery was partly destroyed and partly damaged. She claimed for the loss against the defendant as one of the underwriters under a Lloyd's policy. The defence was that there was no fire under the meaning of the policy, which would only cover damage by a fortuitous fire where no fire was intended to be and where the fire had broken its bounds; that in this case the fire was in the grate just where it was intended to be. The judge (Mr. Justice Atkinson) held that nevertheless the loss fell within the policy and gave judgment for the plaintiff for the agreed amount of £460 and costs. He pointed out that the underwriters admitted that if a draught blew the flame of a candle against a curtain they would be liable for the fire which resulted, and he could not see that the case would be different if the curtain was blown against the candle. The proof of such losses, obviously, is difficult, and no insurers will wish to encourage claims of such a nature.)

> If such a fire, on the other hand, by throwing out sparks or otherwise causes ignition to take place outside its proper limits, there is at once the intervention of an accident. The fire thus caused, being fortuitous in its origin, is a fire within the meaning of the contract, and any loss occasioned thereby, whether by direct burning, or by scorching or cracking, or by smoke, or by water or chemicals used in extinguishment is within the contract.

The word "fire" is used in its popular meaning; it does not extend to chemical actions which, though they may correspond in their effects to fire, do not result in an actual ignition. Thus, lightning may be a form of fire, but loss occasioned by lightning without ignition is not, in the ordinary meaning of the words, a loss by fire, although the contract is usually[1] so framed as to cover such loss. Where, however, the lightning results in ignition, a loss occasioned by such ignition is a loss by fire.

Though the assured must show that he has sustained a loss by fire within the meaning of the contract before he can recover against the insurers, it is not necessary for him to show that the property insured has actually been burned or damaged by fire. It is sufficient if he succeeds in proving that fire was the proximate cause of his loss, since every loss of property which clearly and proximately results, whether directly or indirectly, from a fire is within the contract.

Mr. Sanford Cole in his *Law of Fire Insurance* gives a succinct definition of fire as follows—

Unless a different intention appears from the terms of the contract the expression "fire" means something being on fire which ought not to have been on fire, in circumstances which are accidental or amount to a casualty or could not be foreseen. The expression "fire" does not include fire caused by wilful misconduct on the part of the insured. Subject to this exception the cause of fire is not material.

Inception.

What are the preliminaries to the contract? One of the necessary elements of all contracts is "offer and acceptance" (Chapter I). The offer may come from either party but generally it is made *to* the insurers in the form of a proposal. This proposal may be verbal only, e.g. in the case of the building of an ordinary private dwelling house, "a risk"[2] which is always acceptable owing to the very small degree of hazard involved—physical or moral. Or the proposal may be made by the use of a printed form filled in and signed by the proposer. This form contains various questions as to physical and moral hazard (Appendix I) and is generally used for proposals on the contents of private dwelling houses or on the building and contents of the smaller class of shops and other trade premises, where an inspection by the insurers is unnecessary. The answers to the questions dealing with moral hazard will usually determine the acceptability of the proposal, whilst the rate to be charged will depend more particularly on the facts elicited by the other questions.

[1] As regards fire insurance alone, one might say, invariably.

[2] The word "risk" is normally a synonym of "hazard," but is frequently used, as here, to denote "subject of insurance."

In the case of larger risks or of those where the hazard involved is of a variable or unknown nature the insurers will usually send their surveyor to report on the premises. A proposal form may or may not be filled up in such cases, but if it is the answers to the questions on physical risk will only be of minor importance, as the fact that the surveyor has had the opportunity to ascertain the facts for himself will usually mean that any misunderstanding, or even misrepresentation, as to these will be construed against the insurers.

Whichever method is used for making the proposal, acceptance will almost invariably be conditional on the proposer's willingness to pay the rate demanded. We thus really have two stages of offer and acceptance—

1. The proposer offers his property for insurance.
   The insurers accept it, conditionally.
2. The insurers offer to complete the contract at a given rate.
   The proposer accepts unconditionally.

Assuming the acceptance absolute, the insurers will now commonly be asked to give "cover" pending the preparation and delivery of the formal contract which constitutes the policy. Cover, again, may be given orally, in writing, or by the issue of a printed form (Appendix II) containing the usual conditions of the policy itself.[1] In many cases, however, cover will be asked for before the insurers make their inspection, and to meet this variation the cover note contains a stipulation that the insurers can cancel the cover if they so desire.

Renewal.

One year is the usual period for which a fire insurance policy is issued and a little before its expiration the insurers will invite renewal for a further year by the issue of a "renewal notice." There is no obligation at law to do this but the custom is universal, as is the allowance of 15 days' grace (for annual insurances) from the named date of expiry to allow the insured a margin of time for the payment of the premium. Many nice legal points are involved in case of a loss happening during these 15 days but for

[1] "Unless it can be proved by the company that the proposer knew or had the opportunity of knowing the terms and conditions of the policy, referred to in the cover note, these are not binding on the proposer."—S. Cole.

our purposes it is sufficient to say that, unless there is clear evidence that the insured had no intention to renew, the insurers will consider themselves liable in the same way as if the premium had actually been paid.

Renewal is considered as being equivalent to the making of a fresh contract and there is a revival of the necessity for the full disclosure of all material facts as at the inception of the insurance. That is to say, any material change must be disclosed whether or not it happens to contravene a condition. The insurers have the option of reconsidering their terms and rates and in practice a large number of alterations are made by offices at each renewal date, the rates for classes of risk which have proved unprofitable being advanced and those for classes where an improvement has taken place being reduced. Fresh clauses or warranties may also be introduced or those which have proved inequitable expunged.

Term Agreements.

For some years past insurers have granted discounts in certain cases in exchange for written agreements from insured to renew policies for three or five years and to pay premiums annually in advance.

Certain forms of agreement provide for automatic renewal in the absence of notice in writing by either party to the contract given three months prior to the expiry date of the agreement.

Such an agreement relates to a policy as it stands at the time the agreement is signed, but will remain valid if the amount insured is reduced to correspond with a lower value at risk.

The insurers cannot increase the rate of premium during the currency of the agreement if no material change has taken place in the physical hazards of the risk, nor can they compel the insured because of the agreement to pay a higher rate of premium if the risk has increased.

In the latter event offer and acceptance are the necessary preliminaries to a new contract.

The agreement to renew is not binding on the insured if he ceases to be interested in the property covered.

Cancelment.

The renewal of some policies will also be declined and it is customary in such cases to give notice of an intention to that effect

a week or so before the renewal date, partly to ensure that the insured shall not claim the benefit of the days of grace and partly to enable him to make arrangements with other insurers, if he can.

This introduces to our notice the fact that in Home Fire practice the insurers cannot on their own initiative cancel a policy during its current term. A change in the subject-matter or in the circumstances affecting it may render the contract one which no longer applies, or a breach of condition may nullify the policy (" avoid the contract "), but in the absence of both of these the insurers have no option but to continue " on the risk " until expiry of the current term. Although this disability occasionally gives rise to uneasiness, notably in cases where during the currency of an insurance doubts arise as to moral hazard, it has always been felt that such a condition would be considered oppressive by the public in this country, and would probably rarely be enforced.

It must be noted on the other hand that the payment of a loss automatically reduces the amount of the policy by the amount so paid, the contract being "fulfilled" to that extent. The insurers can, and frequently do, reinstate the insurance to its former amount on payment of the premium pro rata to date of expiry. But they are under no obligation to do this.

The Policy.

Messrs. Welford and Otter-Barry state that any written document containing a contract of fire insurance may be regarded to all intents and purposes as a policy, but in the usual acceptation of the word the policy is the well-known form of document with pictorial device, list of the directors, etc., at the head, the description and particulars of the property, sum insured, premium and date of renewal, below (Appendix III). In the description will be found clauses, stipulations and warranties peculiar to the individual contract; on the back of the policy are usually printed the conditions of general application. Memoranda signed by the insurer (known as "endorsements") may be written on or affixed to the policy. These register changes of interest, amount, description of subject-matter, and other alterations subsequent to the issue of the policy, as they occur and are notified and agreed to by the insurers. Of these various matters the scope of this chapter embraces

only the printed conditions. The definition on the face of the policy of the risks cognate to ordinary fire, their inclusion, limitation or exclusion, are dealt with in Chapter VI, and the face wording is given in Appendix III.

The Printed Conditions.

It is most essential that all students of fire insurance should be conversant with the intention and effect of these. It is scarcely an exaggeration to say that the whole of the principles of the business and the greater part of the practical application of those principles is reflected in the policy conditions. They offer to the observant an epitome of the gradual evolution of fire insurance from a primitive gamble to a skilled profession. In them may be traced not only the selection by generations of insurers, clause by clause, of a workable contract, but the building-up at the same time of a legal structure mainly founded on the " Common Law—the ancient unwritten law of this Kingdom "—with such extensions as necessity has from time to time dictated. Statute (or written) Law has no direct bearing on these conditions and, indeed, there is but little Statute Law in connection with fire insurance at all.

The conditions have gone through some vicissitudes. In a policy before the writer, and dated 1854, they are printed on the face and are thirteen in number.[1] Four of these are combined in one single condition in a modern policy, three are in the nature of information only and no longer appear, whilst the remaining six survived and lengthened out considerably in doing so. (The arbitration condition in this old form is expressed in two and a half lines, the contribution condition in one !) As the nineteenth century waned the wordings became longer and longer and fresh conditions were introduced, till it became a formidable task in many companies' policies to read through them all. The public, agents, and insured took fright and a leading office suddenly conceived the idea of issuing a " conditionless policy." Such a title was quite misleading. No contract can be conditionless. The conditions may be omitted but Common Law will still be available to decide most questions and indeed, as we shall see, a number of the

[1] The three policies in the appendix, 1782, 1817 and 1923, should be carefully compared.

conditions are merely an indication of the Common Law. Moreover, the policy referred to included, in its face wording, most of the stipulations on which the insurers rely. However, good resulted; the leading companies got together and agreed on a code of essential conditions embodied in a common form of contract known as the Standard Policy (see Appendix III). This not only secured the great advantage of simplicity, but uniformity of wording meant the end of difficulties and disputes which had so often arisen as to questions of liability where two or more offices insured the same risk.

The conditions of the Standard Policy are eleven in number and they reflect the latest ideas on the legal and practical interpretation of the contract. Some are concerned with questions of principle, others with details of practice, although in either case it will be hard to say that both considerations are not present. Still for the purposes of this book a division on the lines of matters of principle or of matters of practice will be convenient and, it is hoped, illuminating. The numbers given refer to the order in which they will be found in the policy form.

Conditions Dealing more Especially with Matters of Principle

The necessity for "the utmost good faith."	(1) & (2)	Stipulation for disclosure of all material facts at inception of contract and of any material alterations after the risk has been undertaken, and for the insurers' consent to such alterations.
	(5)	Fraud will "avoid" the policy.
The principle of indemnity.	(6)	Insurers' option of reinstatement in lieu of compensation in cash.
	(9)	Insurers' rights of subrogation.
Personal nature of the contract.	(2)	Policy not assignable without insurers' consent.
Principle of contribution amongst co-insurers.	(8)	Provision for (*a*) limitation of insurers' liability to rateable share of total insurance, (*b*) advantage of "average" if that advantage is already secured to a co-insurer, (*c*) limitation of liability by introduction of "average" if property also insured by "excess" policy.
Arising out of anomaly in law as to warranties	(10)	Provision for validity of any warranties in the policy (with certain reservations) during its currency.

Conditions Dealing more Especially with Matters of Practice

Limitations of the contract.	(3)	Exception from contract of— (*a*) certain things, (*b*) certain causes of fire, (*c*) certain perils cognate to fire or resulting from it.
Procedure in event of loss.	(4)	Stipulations as to making and proving claims.
	(7)	Insurers' rights of entry, investigation and possession of salvage. Denial of any right of " abandonment " to the insured.
	(11)	Reference of differences to arbitration.

It may here be emphasized that the bulk of the provisions contained in these printed conditions are merely either an indication of the Common Law or an extension of it. The remaining provisions are either details of the contract or are intended to strengthen the insurers' position where experience has shown this to be necessary, either from the strictly underwriting point of view or from a lack of legal cognizance of the matter likely to be in dispute.

We will now examine the conditions, one by one, in the order given above, setting out the standard wording in each case and making reference as necessary to the comparative condition in an average "pre-standard" policy (Appendix III (*c*)).

Condition 1. *Necessity for Disclosure of all Material Facts*

This policy shall be voidable[1] in the event of misrepresentation, misdescription or non-disclosure in any material particular.

The view has been generally held that this condition serves merely for the information of the insured, the insurers being sufficiently protected under the usual Common Law requirements for all contracts (see Chapter I), fortified by the special principle of Insurance Law which provides for the utmost good faith. But the latest legal opinion is that such a condition is desirable in view of certain doubts which have arisen as to the correct interpretation of the Common Law in this connection. In the old form the insurers' legal rights are diminished as under the condition it is conceded that misdescription, misrepresentation or omission will invalidate the contract only so far as regards the property involved, the other items (if any) of the policy remaining unaffected. A misstatement in the answers on the making of the proposal is, however, fatal to the whole policy. These distinctions are not maintained

[1] Note particularly the word "voidable."

in the standard wording, but the word "voidable" (Chapter I, p. 10) should be noted as an indication of the insurers' attitude in the matter.

In practice the insurers do not rely on any harsh interpretation of this condition, but will probably be guided entirely by the question as to whether the misrepresentation, etc., is of a material character, that is to say, whether their acceptance or rating of the risk was unduly influenced by it. As an instance we have the case of *Anderson* v. *Commercial Union Assurance Company* in which (although decision was come to on another point) the judges held that the fact of the plaintiff failing to disclose that he was only a tenant on sufferance was a material prejudice to the insurers—presumably because the latter found that, on their electing to reinstate the insured's machinery, which was the subject of the policy, it was inaccessible to them on account of the termination of his tenancy of the building in which it was housed. This is a good example of the point already alluded to that the proposer must disclose all matters which are in fact material, not those which *he* considers material. For he might have been excused for thinking that the precarious nature of his tenure was no concern of the insurers. As matters turned out the circumstance was highly prejudicial to them.

Another case of interest in the failure by a proposer to disclose facts material to acceptance by the insurers came before Lord Justice Slesser in the Court of Appeal in 1936, *Locker & Woolf, Ltd.*, v. *Western Australian Insurance Co.* In answering a question on the proposal form "Have you ever sustained loss by fire?" the answer was "Yes—£5, Sea Insurance Co." To "Has this or any other insurance of yours been declined by any company?" the answer was "No." It was held that the fact that one of the partners of the firm had sustained a considerable fire loss in 1919, when trading on his own account before the limited company was formed, and also that the firm when trading in partnership had applied for a motor policy and had been declined by a company amounted to non-disclosure of material facts which justified repudiation of the loss which was the subject of the action.

In practice the usual point of importance in connection with this condition is found in the answers on the proposal form to the

questions involving moral hazard: "Have you ever sustained a loss?" and "Has any company declined to insure you or to renew your insurance?" or words to that effect, and as indicated above, a mis-statement here may be fatal to the whole contract. It has been suggested that it would be better to have the condition set out on the proposal form itself, but this would hardly do seeing that, as we have already noted, a great many insurances are accepted without such a form.

Condition 2. Stipulation for Insurers' Consent to any Material Alterations

This policy shall be avoided with respect to any item thereof in regard to which there be any alteration after the commencement of this insurance
(1) by removal
or (2) whereby the risk of destruction or damage is increased
or (3) whereby the insured's interest ceases except by will or operation of law unless such alteration be admitted by memorandum signed by or on behalf of the company

Here, as distinct from the preceding condition, the words "shall be avoided" are important. It is clear that if two parties make a contract about certain property which, with the circumstances involved, is described in the contract, and if afterwards other property is substituted, or the circumstances so altered as to affect the bargain between the parties, then the consent of one or other of them is requisite if the contract is to remain good. The original contract no longer exists. For instance, if a person takes out a policy to cover furniture in an ordinary private house, and without advising his insurers removes some of it for purposes of repair to a cabinet factory where the rate of insurance is perhaps ten times as heavy, he cannot as a reasonable man expect the insurers to accept such a change of hazard without a corresponding increase of premium. And this illustrates the principal reason why such a condition is inserted, that is to ensure that adequate premium is obtained for an increase of risk, or perhaps, more rarely, to cancel the insurance altogether if the risk becomes uninsurable. Sometimes another consideration obtains. The insured may remove his goods to a situation where the insurers are already covering as much property as they care to have at risk in one place. An instance would be a furniture depository where the insurers were prepared to lose an amount of, say,

£3,000, and had already, by means of reinsurance, limited their liability to that extent, when our insured stores his belongings insured for £2,000 in the same place without advising them. On the occurrence of total destruction of the warehouse the insurers are faced with the alternative of repudiating the contract or paying £5,000, when they had made careful arrangements to prevent their outside loss on the risk exceeding £3,000. They could not be blamed if they enforced the condition. The enforcement, however, like that of the preceding condition, is very much a question of equity. If the insurers are not prejudiced by the alteration, or if the enforcement of the condition is a serious hardship to the insured, the insurers will usually waive their rights. This is seen occasionally in cases where breach of a warranty in a landlord's policy is made by one of his tenants without his knowledge or consent. The insurers will probably condone the breach on payment of the additional premium which has accrued. A still more difficult case is that of a tenant the insurance of whose stock is invalidated by breach of warranty by a fellow-tenant in the same building whose proceedings are either unknown to him or quite beyond his control.

It will be noticed that in the standard policy the intention of the condition is indicated much more clearly than in the old form; also that the condition as to change of interest is combined with that dealing with alteration of risk.

A good illustration of the legal considerations involved in this condition is seen in the case of *Pearson* v. *Commercial Union Assurance Company* (1873). The policy was for £10,000 for three months "for the hull of the steamship 'Indian Empire,' with her tackle, furniture and stores on board belonging, lying in the Victoria Docks, London, with liberty to go into dry dock, and light the boiler fires once or twice during the currency of this policy." Adjoining the Victoria Docks there was a graving dock, not strictly a dry dock, although available as such, but the entrance was too small to admit the ship; she was therefore moved two miles up the river to another dry dock, and the lower part of her paddle-wheels removed to allow her admission. The repairs being complete at the end of the two months, she was towed down the stream to within 500 or 700 yards of the Victoria Dock for the purpose of

having the parts of the paddle-wheels which had been removed replaced there. The utmost despatch was used, and in ten days the work was nearly complete, when she was burnt at her moorings.

It was proved that the premium would have been the same with the principal London Offices, whether the ship lay in the river or in the docks, but that in the Victoria Docks there were very careful precautions taken against fire—watchmen at all hours, and a numerous fire brigade, with an ample supply of water, and all the usual appliances for putting out fires ; while in the river there were only three floating engines, between the arrival of the first of which and the breaking out of the fire nearly an hour had, in fact, elapsed. It was also proved that the work might as well have been done in the dock as in the river, but that the expense would have been much greater. The Court held that the policy protected the vessel while in the Victoria Docks, or any dry dock, whether in the river or not, and notwithstanding that the latter might be at some distance from the former ; and also while in transit, but that the risk was limited to the transit, and did not extend to the time during which the ship stopped in the river not for the purpose of that transit. This judgment was affirmed in the Exchequer Chamber, and in the House of Lords (*Bunyon*). See Assignment of Policy, page 33.

Condition 5. *Fraud will Avoid the Policy*

If the claim be in any respect fraudulent or if any fraudulent means or devices be used by the insured or anyone acting on his behalf to obtain any benefit under this policy or if any destruction or damage be occasioned by the wilful act or with the connivance of the insured all benefit under this policy shall be forfeited.

There would seem to be two main ideas underlying this condition, firstly that of emphasizing the fact that arson, whether the act of the insured or of anyone else with his connivance, will avoid the policy, secondly that a claim of a fraudulent nature is equally fatal to the validity of the contract. With regard to the first it is obvious that arson is a deed of the " utmost bad faith " and as such no condition would appear to be necessary to call attention to the fact, although in the Standard Policy it will be seen that special emphasis is given to it. As to the second, Bunyon would appear to have thought that the presentation of a fraudulent claim

would be no bar to putting forward another claim if the first did not succeed. This, however, seems to be in conflict with the principle requiring the "utmost good faith" and the argument is difficult to follow.

In practice the condition is seldom made use of by insurers, owing to the difficulty of proof in cases of arson and the danger of failing to prove it. In such cases it is preferable to rely on a technical breach of some other condition, if such a breach has occurred, and insurers will occasionally avail themselves of an alternative defence of this kind, which fact accounts for a great deal of the talk one hears about fire insurance companies evading claims on technicalities.

As to what constitutes a fraudulent claim from the point of view of amount, it is often very difficult to distinguish between mere rapacity and absolute fraud, and Mr. A. D. Robertson in an able article in the *Journal of the Chartered Insurance Institute* (Vol. XI) states that in France the insurers "have a rough and ready rule to the effect that they will never plead fraud in respect of *price* but only in respect of *quantities*." This is supported by a judgment in our own courts: "If the plaintiff deliberately introduced into his claim one article which he never possessed or placed upon one he did possess a fraudulent and false value he was not entitled to recover, but merely putting-it-on after the fashion of claimants i.e. for what they considered bargaining purposes, whilst ethically indefensible, did not necessarily amount to fraud."

The foregoing three conditions are referable to the principle under which the utmost good faith is required. We will now examine those in which the principle of indemnity is a leading consideration

Condition 6. *Insurers' Option of Reinstatement*

If the company elect or become bound to reinstate or replace any property the insured shall at his own expense produce and give to the company all such plans, documents, books and information as the company may reasonably require. The company shall not be bound to reinstate exactly or completely, but only as circumstances permit and in reasonably sufficient manner and shall not in any case be bound to expend in respect of any one of the items insured more than the sum insured thereon.

It has occasionally happened that the only solution of the problem of arriving at an exact indemnity has been reinstatement of the

property lost. An interesting instance in this connection arose in come Scottish cases a few years back. A loss on property which had been mortgaged to two different interests gave rise to a dispute between the parties as to whether both interests could recover the amount of their loss from their respective insurers. To the surprise of most people in the business the courts ruled that they could do so, stating that it did not follow that because one interest could, under the principle of indemnity, only recover the amount of the loss, that the principle could be extended to prevent two separate interests recovering between them from the different insurers an amount in excess of the loss; that as a matter of fact hardship would have been suffered in that very case by the second mortgagees, whose security had perished as a result of the loss, whilst the first mortgagees refused to apply the policy-moneys to rebuilding. The remedy, the court pointed out, would have been for the different insurers to get together and reinstate the property when no hardship would have arisen to anyone. It is curious to observe that, owing to a misconception on the part of the insurers as to the scope of indemnity, they failed to avail themselves of a condition which they had specially inserted for their own protection. But their motive in inserting this arose from other considerations, and mainly as a protection against unreasonable claims. If an insured person attaches an inflated value to the goods which he has lost and proves refractory in the negotiations, a suggestion that the insurers should buy identical goods in replacement usually brings him to reason.

The same method can be applied to insurances on buildings but it is not without its dangers. Once the insurers have elected to reinstate instead of paying cash they must stand by that election. And the matter may prove very irksome or almost impossible. This is well illustrated in the case of *Brown* v. *Royal Insurance* (1859) in which, after such an election, and while the defendants were proceeding to reinstate, the premises became dangerous, and were caused to be removed by the Commissioners of Sewers, under the provisions of the Building Act. Upon an action for not reinstating, the defendants pleaded the removal of the buildings, and that the dangerous condition was not caused by the fire, and that by the removal the reinstatement had been rendered impossible;

and that if the buildings had not been removed the defendants would have restored them to the condition that they were in before the fire. The Court of Queen's Bench held the plea to be bad. Chief Justice Lord Campbell considered that after election the insurers were in the same situation as if the policy had been absolute to reinstate the premises in case of fire; that when an election is given by a contract, and the election is made, it is the same as if there has been no right of election, and the party making it is absolutely bound to do that which he has elected to do; and it is no doubt true, as a rule, that a person, after making his election, in the absence of a condition to the contrary, cannot change his mind on finding his choice to be more onerous than he has expected (*Bunyon*).

In pointing out that, under the condition, reinstatement is at the option of the insurers, not of the insured, it is necessary to call the student's attention to the fact that, under one of the few statutes relating to fire insurance, parties outside the contract of insurance but having an interest in the subject-matter may call upon the insurers to reinstate. This statute is The Fires Prevention Act (Metropolis)[1] of 1774, and the provision reads as follows—

> And, in order to deter and hinder ill-minded persons from wilfully setting their house or houses, or other buildings, on fire, with a view of gaining to themselves the insurance money, whereby the lives and fortunes of many families may be lost or endangered; be it further enacted by the authority aforesaid, that it shall and may be lawful to and for the respective governors or directors of the several insurance offices for insuring houses or other buildings against loss by fire, and they are hereby authorized and required, upon the request of any person or persons interested in, or entitled unto, any house or houses, or other buildings, which may hereafter be burnt down, demolished, or damaged by fire, or upon any grounds of suspicion that the owner or owners, occupier or occupiers, or other person or persons who shall have insured such house or houses, or other buildings, have been guilty of fraud, or of wilfully setting their house or houses, or other buildings, on fire, to cause the insurance money to be laid out and expended, as far as the same will go, towards rebuilding, reinstating, or repairing, such house or houses, or other buildings, so burnt down, demolished, or damaged by fire; unless the party or parties claiming such insurance money shall, within sixty days next after his, her, or their claim is adjusted, give a sufficient security to the governors or directors of the insurance office where such house or houses, or other buildings are insured, that the same insurance money shall be laid out and expended as aforesaid; or unless the said insurance money shall be, in that time, settled and disposed of to and amongst all the contending parties, to the satisfaction and approbation of such governors or directors of such insurance office respectively.

[1] Although so named "it must now be considered as settled that, as far as regards buildings in England and Wales, it is a general provision" (*Bunyon*).

The standard case of reinstatement under this statute is *Sinnott* v. *Bowden* (1912). The plaintiff was a judgment creditor of the defendant and on a fire occurring in the house of the latter *Sinnott* lodged a "garnishee" order with the insurers to restrain them from paying the loss to Bowden in order that he, Sinnott, might intercept the money in settlement of his debt. But Bowden had a mortgage on the house and the mortgagee invoked the Act and succeeded in compelling the insurers to reinstate in lieu of paying the loss money to Bowden or Sinnott.

A recent case, *Portavon Cinema Company* v. *Price and The Century Insurance Co.* (1939), is of considerable interest, especially so to Lloyd's underwriters. In this case, which related to a question of allocation of liability as between two fire policies, Mr. Justice Branson decided a point of interest which had apparently never been decided before, namely, that Section 83 of the Act (which provides that any person interested in a house or buildings burnt down or damaged by fire might give notice to the governors or directors of the several *insurance offices* requesting them to expend the insurance moneys upon reinstating the premises burnt down) has no application to a Lloyd's policy, because the underwriters are *not* an *insurance office*. The Judge made short work of the contention that the Corporation of Lloyd's was an insurance office by saying that the answer to that is that the Corporation of Lloyd's do not insure anybody against anything. It is the underwriters who undertake the burden of insurances. As to the argument put forward that a group of underwriters continually acting as a body might be an insurance office within Section 83, Mr. Justice Branson said that if one thing is plain with regard to underwriting by members of Lloyd's it is that each member makes a contract for himself for the amount of his liability, the contract being an independent contract of his own, and he is in no way interested in the other contracts undertaken by other members who underwrite the same policy. No authority was needed for that statement which the Judge thought should by now be known to everybody who had to deal with Lloyd's policies and the liabilities of underwriters.

On reference to the face wording of the standard policy given in Appendix III, it will be seen that the option of reinstatement is made part and parcel of the contract proper, the condition being

restricted to a stipulation for assistance from the insured, etc. An interesting point arises in connection with valued policies and the question is asked, "Could the insurers under a valued policy avail themselves of the alternative in the contract and reinstate the property in lieu of payment?" Whatever doubts there are as to this under a policy in the old form, it seems to be clear that under the standard form they could do so, on the ground that the agreement as to values applies only to the first alternative, that of payment.

Condition 9. Insurers' Rights of Subrogation

Any claimant under this policy shall at the request and at the expense of the company do and concur in doing and permitting to be done all such acts and things as may be necessary or reasonably required by the company for the purpose of enforcing any rights and remedies, or of obtaining relief or indemnity from other parties to which the company shall be or would become entitled or subrogated upon its paying for or making good any destruction or damage under this policy, whether such acts and things shall be or become necessary or required before or after his indemnification by the company.

The legal process known as subrogation arises out of the right of one party, on payment of compensation to another, to avail himself of any remedy the latter may have against a third party in connection with the event under which compensation became payable. In fire insurance if A has issued a policy to B and B sustains a loss through the neglect of C then A, having paid B's loss, is entitled to stand in B's shoes and use his right of action against C and so recoup himself for the loss paid to B, or such portion of it as may be recoverable, from C. B must also give every facility to A to enable him to do this. B's rights against C will in the majority of cases arise either out of some contract between them or as the result of an act of " tort " on the part of C. (Tort may be defined as an actionable wrong not amounting to misdemeanour, or arising out of contract.) An instance of subrogation arising under contract would be that of a lessee covenanting with his lessor to insure his house against fire and failing to do so. The lessor, having doubts in the matter, had also insured and recovers his loss. The insurers then claim to take up his right of action for breach of covenant against the lessee and the onus is shifted to the party who is to blame.

Subrogation arising out of tort is exemplified in a case where a house was set on fire through leakage of gas from a main fractured

by the carelessness of Corporation workmen. The insurers paid the loss and then recovered from the Corporation by an action for damages in their insured's name.

Other instances where rights of subrogation occur may be seen in the payment of loss to farmers where redress is open to them under the Railway Fires Act (by which railway companies are responsible up to £200 for property fired by sparks from their locomotives—*see* Appendix IV) or to any persons whose property is set fire to by rioters, in which case such persons are entitled to compensation out of the County rate. The latter instance is dependent, however, on various circumstances which will be referred to in a later Chapter.

But to the student the most interesting feature of subrogation is its use as a means of enforcing the principle of indemnity. The standard case is *Castellain* v. *Preston.* The latter had contracted to sell a building to Rayner (*see Rayner* v. *Preston*, p. 34) but before completion of purchase by Rayner the building was seriously damaged by fire. From the signing of the contract the property was, in accordance with the Common Law, at Rayner's risk and he had to pay Preston the full price arranged notwithstanding the damage to the property. Preston, meantime, had also recovered the loss from his insurers and was, for the moment, in the happy position of having scored both ways. On the insurers learning the facts they prosecuted an action through their secretary, Mr. Castellain, to recover the amount paid by them. This action failed at first on the ground held by the Court that such a case did not come within the scope of the principle of subrogation, but on appeal their judgment was reversed, the judges in the higher Court holding a contrary opinion. One of them in a very lucid statement (to be found in Bunyon) laid it down that " the underwriter is entitled to the advantage of *every right* of the insured, whether such right consists in contract, fulfilled or unfulfilled, or in remedy for tort capable of being insisted on or already insisted on, or in any other right, whether by way of condition or otherwise, legal or equitable, which can be exercised or has been exercised or has accrued, and whether such right could, or could not, be enforced by the insurer in the name of the insured, by the exercise or acquiring of which right or condition the loss can be, or has been diminished."

Condition 2 (part). Policy not Assignable at Will

See wording given above under Condition (2).
(In the old forms this was a separate condition.)

This condition illustrates and emphasizes the personal nature of a fire insurance contract under the Common Law, but exception is made in favour of automatic transfer to beneficiaries under will or to successors in interest by " operation of law." A common instance of the latter would be a trustee or receiver in bankruptcy.

The condition is useful as an indication to the insured that he cannot rely on the insurers accepting a transfer to his nominee, although they will usually be glad enough to do so. But if the person acquiring the interest in the property is known unfavourably to the insurers or is of a class they usually decline then, naturally, they will prefer to let the policy lapse.

This principle as to non-assignability was involved in the well-known case of *Rayner* v. *Preston.* As stated in the account given above of *Castellain* v. *Preston,* Rayner had contracted to purchase certain property and before the purchase was completed a building was damaged to the extent of £330. This fact did not, under the Common Law, alter Rayner's liability to pay the full amount agreed nor did he succeed in establishing a right to benefit under the policy, which was held to be a personal contract *covering the interest of the insured in the property and not the property itself.* Rayner undoubtedly acquired an interest but he had not insured it. Bunyon points out that had Rayner's case been fought under the provisions of the Statute of 1774 (*see Sinnott* v. *Bowden,* p. 30) he might, as a person interested in the subject of the loss, have succeeded in compelling the insurers to reinstate the damage.

The difficult position thus created during the period " pending completion of purchase " caused a great deal of uneasiness in the minds of persons like conveyancing solicitors responsible for the insurance of their client's interests. They pointed out that as a result of these two actions the interests of neither vendor nor purchaser would appear to be covered after signature of the contract and pending delivery of the deeds. (This delay in completion is mainly attributable to the necessity for close enquiry into such questions as the vendor's title to the property.) As a result it is now

the practice of all fire offices to hold both parties covered for their respective interests pending completion. When this takes place the policy is handed over with the deeds and then sent in to the office for endorsement, the purchaser paying the vendor the amount of the premium unexpired to date of renewal.

Printed fire policies for the insurance of buildings of private dwelling houses now include a memorandum setting out clearly the conditions under which a contracting purchaser may avail himself of the protection of the vendor's policy until completion takes place. The wording is as follows—

> MEMO. If at the time of destruction or damage to any building hereby insured the insured shall have contracted to sell his interest in such building and the purchase shall not have been but shall be thereafter completed, the purchaser on the completion of the purchase, if and so far as the property is not otherwise insured by or on behalf of the purchaser against such destruction or damage, shall be entitled to the benefit of this policy so far as it relates to such destruction or damage without prejudice to the rights and liabilities of the insured or the company under this policy up to the date of completion.

If the purchaser elects to continue the insurance in his own name, then the purchase price will include the value of the unexpired period of the vendor's policy, but it is important to note that this change in interest is notified to the insurer.

The same memorandum may be included in policies covering the buildings of other property. It is customary, however, to confine the printed memorandum to private house policies.

Condition 8 (first part). Principle of Contribution amongst Co-insurers

In the discussion of subrogation we saw how the incidence of the burden of a loss might be shifted from one party to another: we have now to consider how that burden may be *divided* between insurers whose policies apply jointly to the property at risk. The fact that two or more insurers covering the same interest must share in the loss is well-established on principles of equity, derived from a similar state of affairs obtaining as between sureties, long since accepted as part of the Common Law. The first part of the usual condition reads as follows—

> If at the time of any destruction of or damage to any property hereby insured there be any other insurance effected by or on behalf of the insured

covering any of the property destroyed or damaged, the liability of the company hereunder shall be limited to its rateable proportion of such destruction or damage.

In the first place it should be noted that in the absence of the condition there would be nothing in the event of a partial loss to prevent the insured from claiming the amount from any one office and leaving it to collect the proper contributions from the other offices, a matter of time and, possibly, trouble. In the next place what is the meaning of the word "subsisting"? A policy may be in existence and paid to renewal but it is not necessarily valid. E.g. it may contain a warranty to which the facts do not correspond, rendering the contract void, or at any rate voidable. Such a policy would be *existing but not subsisting*, the latter word implying that there is not only a contract but that it is enforceable.

The phrase "effected by the insured or on his behalf" has a history behind it. It was formerly supposed by responsible people in the business that if the same property were insured with different companies on behalf of different interests the occurrence of a loss brought all the policies into contribution without any question. Further, that the different insurers could not, between them, be called upon to pay more than the actual amount of the loss. This qualification "effected by the insured" did not therefore appear in the condition. Two important legal decisions exploded both these assumptions. The first was given in what is usually known as *The King and Queen Granary Case* (1876). Here, in accordance with the custom of the trade, wharfingers had accepted responsibility for, and insured against fire, loss to grain which they had sold to merchants but which remained at their granary. The merchants, to make assurance doubly sure, had also taken out policies with another company. On a loss occurring the wharfingers' insurers, having settled the claim, brought an action against the merchants' insurers to compel them to contribute. The latter pleaded that the primary liability was with the wharfingers' insurers, their own policies being effected by the merchants to cover the risk of the wharfingers not insuring or insufficiently insuring. So that even if they were brought into contribution they would be entitled to get back their loss payments by way of subrogation into the rights of the merchants as against the wharfingers. In result the court decided that there was no case for contribution where

different interests were insured and that in this case the wharfingers' insurers had the *primary liability.* Moreover it was laid down that the word "property" in the condition did not mean the material subject of insurance but the interest which the insured had therein.

The other case was that already referred to under REINSTATEMENT (p. 28) in which it was held that "property" meant "proprietary interest," also that it was a fallacy to suppose that the principle of indemnity necessarily precluded two or more such different interests from recovering, between them, more than the total of a loss.

As a result of these cases the words "effected by the insured or on his behalf" were inserted to make the position clear to all concerned. The majority of the leading offices, however, elected to continue contribution amongst themselves on the old basis, irrespective of interest, certain classes of risk excepted.

The next point for consideration is the meaning of the expression "rateable proportion." Here we come in touch with what is probably the most difficult subject in connection with fire insurance —the apportionment of loss. It is a study in itself and can only be dealt with here in a very elementary manner, but we will endeavour to indicate the principal difficulties and the methods—mostly empirical, it must be confessed—by which they are overcome. They will be found to occur in connection with the first two parts of the condition at present under review. "Rateable proportion" is generally defined to be such a proportion of the loss as the amount of the policy or item, under which the loss occurs, bears to the total insurance under the same heading. Thus two insurers, X and Y, cover stock and utensils in trade in a building under policies for £500 and £200 respectively. On the occasion of a loss of £450 X would pay $\frac{500}{700}$ of the loss or £321 and Y $\frac{200}{700}$ or £129. If there were a third policy for £300 the contributions would be $\frac{500}{1000}$, $\frac{200}{1000}$, and $\frac{300}{1000}$, i.e. £225, £90, and £135 respectively. On these simple lines all losses under non-average concurrent insurances are dealt with; there is apparently no record of any dispute as to its correctness, and there is little doubt that the courts would uphold the system as equitable.

The word "concurrent" leads to the consideration of a further

question. A concurrent insurance is one in which the property covered is identical in character with that of other insurances on the same risk. Thus, X and Y above have concurrent policies on stock and utensils in trade in one building. But suppose X's policy covers stock and utensils and Y's stock only—a common trouble arising from the casual manner in which some insurances are arranged either by the insured or his agent—at once there is difficulty as to contribution. If a loss occurs of, say, £400 on stock and £50 on utensils the assessor is faced with two alternatives. If he takes stock first the assessment will be—

Amount at risk under Policies.			*Loss.*	*Contribution.*	
	X	Y		X	Y
Stock . .	500	200	400	$\frac{500}{700}$ of £400 = £286	$\frac{200}{700}$ of £400 = £114
Utensils .	214[1]	—	50	Whole loss = 50	—
				£336	£114

But if utensils be taken first the assessment will be—

Utensils .	500	- -	50	Whole loss = £ 50	—
Stock . .	450[1]	200	400	$\frac{450}{650}$ of £400 = 277	$\frac{200}{650}$ of £400 = £123
				£327	£123

As there is nothing to determine which method is more equitable the only resource is to "split the difference," or, in more precise terms, to take the mean of the two results, and this represents current practice in the great majority of cases. This instance is, however, a very simple one and all sorts of complications are found in practice, for examples of which the student must be referred to the various books and articles on loss apportionment. One alternative to the "mean method" should be touched on as it is frequently mentioned in textbooks and is considered by some authorities to afford the correct solution of non-concurrent problems. This is known as the method of independent liability but its working will, possibly, be more clearly indicated if we call it the "method of independent liability-for-payment-of-the-loss-in-question," for liability, independent or otherwise, might be taken

[1] Being balance of the £500 after payment of loss on first item.

to mean full liability under the policy, or item, without reference to the amount of the loss. On application to our previous example its force should be clear (losses as before)—

	Liability for stated loss independent of each other's existence.		Rateable contribution on liability as defined in first column.	
	X	Y	X	Y
Stock . .	400	200	$\frac{400}{600}$ = 267	$\frac{200}{600}$ = 133
Utensils . .	50	—	50	—
	£450	£200	£317	£133

Condition 8 (second part). Claim to Import Average.

If any such other insurance shall be subject to any condition of average this policy, if not already subject to any condition of average, shall be subject to average in like manner.

The object of this part of the condition is to secure to the insurers any advantage which other insurers of the risk may have in the way of a "condition of average." A further consideration is the difficulty, or impossibility, of apportioning a loss between average and non-average policies.

Average in fire insurance is a principle by virtue of which under-insurance is penalized by a corresponding under-payment of loss. Thus, if a person has effected a policy for £500 to cover property, which *at the time of the loss* is worth £1,000 then he is under-insured to the extent of one-half the value of the property and can only recover half the amount of the loss. If the loss is total this effect will be seen to be automatic but for anything less than a total loss the condition of average becomes operative, e.g. if the loss is £400 he will recover only £200, whereas in the absence of average he would be in the position to claim the whole £400. It should be further noted that an insurance is always[1] made subject to average where one amount is made to apply to two or more separate risks (a "floating" insurance), and is often so subject where the amount applies to one risk only. The clause under which ordinary average is effected is known in the business as the "*pro rata* condition." There are other forms of average, but we need not discuss them in connection with the contribution condition. There is, however, an important clause generally known as "the second

[1] But see pages 65 and 106.

condition "—although it does not deal with average at all, but with contribution—which must be explained. The wording of the two clauses is as follows—

CONDITIONS OF AVERAGE

1. (" *Pro rata* clause.") Whenever a sum insured is declared to be subject to average, if the property covered thereby shall at the breaking out of any fire be collectively of greater value than such sum insured, then the insured shall be considered as being his own insurer for the difference, and shall bear a rateable share of the loss accordingly.

2. (" Second condition.") But if any of the property included in such average shall, at the breaking out of any fire, be also covered by any other more specific insurance, i.e. by an insurance which at the time of such fire applies to part only of the property actually at risk and protected by this insurance and to no other property whatsoever, then this policy shall not insure the same except only as regards any excess of value beyond the amount of such more specific insurance or insurances, which said excess is declared to be under the protection of this policy and subject to average as aforesaid.

The effect of (1) will be seen to be as explained above, but the wording is so phrased as to represent the insured as a self-insurer, no doubt with the idea of salving his wounded feelings. Not a very solid cause for satisfaction ! But we will deal with the merits and demerits of the clause in a later chapter.

The second clause was introduced to avoid anomalies which arose in cases where an insurance, containing the first clause and covering two or more separate risks, applied to property already covered by a non-average insurance or by another average insurance of lesser range. An example will explain the difficulty, or one of the difficulties. The proprietor of a factory has, we will say, three departments housed in separate buildings, A, B, and C. He insures each building and its contents separately, but his stock is liable to fluctuation in value in the three departments as it proceeds from one to another in the course of manufacture. He tells his insurers: "I have never less value of stock in A than £500, in B £800 and in C £1,000, but there is a floating excess of value between the three of, perhaps, £1,000 and this excess I want covered in any one, two, or all three buildings to meet possible fluctuation at any time." To which the insurers reply, "That will be all right: we will write specific items on stock for £500, £800 and £1,000 in A, B, and C, respectively and a further floating item of £1,000 in all or any of the buildings. But in accordance with the usual requirements where two or more risks are covered in one sum this floating

item must be subject to average." Now observe what would occur if the first condition of average only were inserted. Under the *policy condition* with which we are now dealing, the non-average items could claim to import average and the correct settlement of a loss of £800 in A would be as follows—

	Specific items.	*Floating item.*	*Values at risk.*	*Loss.*
A . . .	£ 500	£1,000	£1,000	£800
B . . .	800		1,200	—
C . . .	1,000	..	1,300	—
	TOTAL £3,300	Total .	. £3,500	£800

The specific items having been attracted to average, the liability under the item on A, viz., the proportion of the loss which the sum insured bears to the value of the stock in A, will be $\frac{500}{1000}$ of £800 = £400.

The floating item's liability under the same measurement will be $\frac{1000}{3500}$ (for it applies to the value of all the stock in A, B, and C, £3,500) of £800 = £229. Thus, the total recoverable by the insured would be only £629 out of a loss of £800 whereas the insurance was to value in the proportion of 33 : 35.

You might say that the insurers would not, in such a case, enforce the condition and it is true they could hardly do so with decency, but it is unsatisfactory to have a contract in such an anomalous and inequitable form, even if it is not going to be enforced. Moreover, the floating insurance might have been effected with other insurers—a very common occurrence in practice.

Now on careful perusal of the second clause it will be seen to be a sort of agreement between the policies or items concerned. The policy with the second clause says, to the more specific policy, " When you are used-up I come in, but not before. When I do come in *I only apply to any surplus not covered by you* although as far as that surplus is concerned I claim to be entitled to the advantage of average." Apply this to our example above and we shall find the settlement becomes much more equitable. The specific item on A will pay £400 as before towards the loss and the floater comes in for the balance of loss. There is altogether £2,300 of specific insurance against £3,500 of value. Consequently the floater has now only £1,200 of value to deal with and being itself for £1,000

only it is liable for $\frac{1000}{1200}$[1] of £400 (being total loss £800 less £400 already paid under the specific insurance) = £333. The insured therefore will recover between the two, £733, which is nearly the amount he would be entitled to recover if the whole stock had been insured in one sum subject to the first condition of average only, viz., £754.

(It may be asked why this latter arrangement is not adopted. The answer is that, if it were, the cost to the insured would be out of proportion to the true risk as prior to the introduction of floating insurances at an average rate (page 103) it was customary to charge premium for floating insurance at the rate applicable to the most hazardous building within its range.)

The introduction of the second condition did not, however, mean that the necessity for its use in such cases was always appreciated by the insured, or their agents, and instances continued to occur where floating policies, subject to average, were taken out with a different office from that in which a specific non-average insurance was effected. To prevent the bad impression given to the insured by the inequitable settlement which such an occurrence involved, some of the leading companies devised, or attempted to devise, another remedy. In the relative pre-standard policy condition the words "in and subject to the same risk only" were introduced following the words "either alone or together with any other property" (see Appendix III (*c*) Condition 9). The effect of this is to prevent a specific policy from importing average from a floater, but the result is not the same as that attained by the insertion of the "second clause" in the latter, as both policies now become liable for contribution on the same plane, whereas with the second condition, as we have seen, one ranks after the other by disclaiming any liability until the other's liability is exhausted. And the only way to arrange contribution between an average and a non-average policy is to invoke the "independent liability" method. Take our previous loss again. Independent of each other's existence the specific insurance is liable for £500 and the floating insurance is liable for $\frac{1000}{3500}$ of £800 = £229, and they

[1] In apportionment under average the liability of a policy for a loss is measured by a fraction whose numerator is the amount of the policy and whose denominator is the value of the property to which it applies. The effect of the second clause is to diminish this denominator, with a resulting increase of liability.

pay these amounts respectively, the insured recovering £729 in all.

Moreover, the introduction of the phrase "in and subject to the same risk only" has been known to give rise to extraordinary results as between insurers. To take an extreme example,

Policy X £5,000 (specific) covers goods in warehouse D.

„ Y £10,000 (average—two conditions) covers, floating, goods in warehouses D and E.

A loss of £3,000 occurs in D when values in D and E are £15,000 and £2,000 respectively.

As X can import average only from an insurance "in and subject to the same risk *only*" it cannot import from Y which covers the risk of E also. Consequently X pays the whole loss and Y escapes altogether.

The student will by now no doubt begin to realize some of the difficulties which beset the underwriter in his attempts to frame equitable forms of condition for contribution and average. Fortunately when it comes to a loss, most assessors have been trained in a school of compromise and by resort to that very English remedy (one can hardly call compromise a principle!) such problems are solved.

To return to our "second condition of average": it must not be supposed that its use is confined to such simple cases as we have illustrated. On the contrary it is more generally found in large insurances on merchandise where all policies are usually subject to average with either the pro rata or both clauses. Sometimes all the insurances will be found to be subject to both conditions and the question as to which policies are more specific than others may become one of a highly complicated nature. But, usually, the position is clear enough, as the following instance will show—

A firm of merchants have amongst their insurances three policies, X covering tea at one warehouse, Y covering tea and coffee at all or any of the public bonded tea warehouses in the Port of London, and Z covering general merchandise at all or any of the docks, wharves, and public warehouses in the same port. X is more specific than Y, both *in range*, for the warehouse is only one of the public bonded tea warehouses, and *in goods covered*, for tea is, of course, more specific than tea and coffee. Y in turn is more specific than Z, for the latter is much wider in range and covers practically

any kind of merchandise. The liability of the policies would be exhausted therefore, one by one, in the order X, Y, Z.

That the objections to the words " in and subject to the same risk only " have gained the day is to be assumed from the fact that the standard policy condition omits the phrase. But this hardly means that the insured will suffer—some equitable form of compromise will have to be devised to avoid such an occurrence. There remains, however, the fact that the actual terms of such a contract may be inequitable, leaving the insured at the mercy of an " ex-gratia " payment.

No satisfaction can be felt by either the insurer or the insured in entering into a contract that may prove to be uncertain in its performance. The "average-rate" floater furnishes the remedy and although to the underwriter it presents an additional problem, it is nevertheless a welcome development.

It is not enough, however, to write off the "second condition" in this manner for it is necessary that the student should have a clear understanding of its importance and of the difficulties that may develop from it in arriving at an equitable settlement.

Condition 8 (third part). Claim to import "Average" in Contribution with "Excess" Policy

If any other Insurance effected by or on behalf of the Insured is expressed to cover any of the property hereby insured, but is subject to any provision whereby it is excluded from ranking concurrently with this Policy either in whole or in part or from contributing rateably to the destruction or damage, the liability of the Company hereunder shall be limited to such proportion of the destruction or damage as the sum hereby insured bears to the value of the property.

This clause is aimed at what are considered to be unfair methods of competition. As an instance: in late years various forms of preferential contract have been exploited by certain underwriters, the most discussed of which is usually referred to as an " excess policy." The idea is this. A person has property, more or less in one risk, worth £50,000, of which he insures, say, £30,000 at 5s. per cent with a company and then covers the remaining £20,000 under an excess policy, the contract under the latter being to pay *the balance of any loss beyond* £30,000. Naturally the " excess " insurers can take this at a lower rate than 5s. per cent, assuming that to be the correct ordinary rate for the property as a whole ; in fact, 3s. per cent should be an excellent figure for such a risk. In this way,

the insured covers his £50,000 at an average rate of considerably less than the normal 5s. per cent. Having once started this idea the excess insurers were quick to extend it by attacking existing business, the insurers on ordinary terms suffering reductions in their amounts in consequence, if indeed they did not lose their share of the business altogether. However, *ces animaux méchants, quand on les attaque, se défendent.* Their method of retaliation is to insert average in their policies, or a condition, such as that we are now discussing, under which average is automatically secured to a policy faced by this form of competition. The effect in the "excess" case above of a loss of £40,000 may be given in illustration. The ordinary policy claiming average under the condition will be liable for $\frac{30000}{50000}$ of £40,000 = £24,000, the excess insurers for £10,000 (assuming always that they have no special clause under which they too can import average or a similar device in diminution of their liability). The insured will realize that "fancy" contracts have their disadvantages when the new position is pointed out to him. Let us hope it will not be *after* the loss.

Condition 10. *Question as to Continuing Force of a Warranty*

The condition dealing with this is generally found towards the end of the list, as the necessity for its insertion was only realized after the hearing of an arbitration case in 1901. The wording is as follows—

Every warranty to which the property insured or any item thereof is or may be made subject shall from the time the warranty attaches apply and continue to be in force during the whole currency of this policy, and non-compliance with any such warranty, whether it increases the risk or not, shall be a bar to any claim in respect of such property or item; provided that whenever this policy is renewed a claim in respect of destruction or damage occurring during the renewal period shall not be barred by reason of a warranty not having been complied with at any time before the commencement of such period.

A warranty is an agreement expressed in the policy whereby the insured asserts that certain facts are, or shall be, true or that certain acts shall be done, relative to the risk. The fact or act warranted need not be of a material nature but nevertheless it must be literally true, or literally complied with—*substantial truth or performance is not sufficient.* This gives the clue to the distinction between a warranty and a representation, under which latter term falls most of the descriptive matter of a policy.

Although a warranty may, and frequently does, appear in the ordinary descriptive wording of a policy, the use of the word colloquially usually denotes certain printed lists of warranties which vary in number and terms with the class of risk. Thus, in the case of policies on corn-mills certain warranties of general application have been drafted and a copy is attached to each policy with a reference in the policy stating which of the warranties are applicable in the particular risk insured. The remaining warranties are waived, on payment of additional premium or otherwise.

The arbitration case referred to above was concerned with a breach of warranty involved by the introduction of power into a woollen warehouse some time after the issue of the policy. The umpire, a well-known K.C., held that there was no breach, the warranty given that no power was used being true at the time the contract was made and having no future binding force in the absence of any stipulation to that effect. This decision caused some consternation among the companies and the first half of the condition as it now stands was inserted in all policies. A few years later a dispute arose between two offices, which led to the addition of the second clause. It appears that the offices in question had issued policies on the same risk, and on the occurrence of a loss one of them endeavoured to avoid contribution on the plea that there had been, in the renewal period before that in which the loss occurred, a breach of a warranty which appeared in their contract but not in that of the other office. Such a plea seems hardly likely to succeed, and did not in this case, but the condition was extended to place the matter beyond doubt.

Having dealt with conditions relating to principles we now come to the second class of conditions, namely those dealing more especially with matters of practice.

Condition 3. Exclusions of Certain Property and Damage by Explosion

This Policy does not cover

(*a*) Destruction or damage by explosion (whether the explosion be occasioned by fire or otherwise)	except as stated on the face of this Policy.
(*b*) Goods held in trust or on commission, money, securities, stamps, documents manuscripts, business books, patterns, models, moulds, plans, designs, explosives	unless specially mentioned as insured by this Policy.

(*c*) Destruction of or damage to property which, at the time of the happening of such destruction or damage, is insured by, or would, but for the existence of this Policy, be insured by any Marine Policy or Policies, except in respect of any excess beyond the amount which would have been payable under the Marine Policy or Policies had this insurance not been effected.

N.B. This condition should be read in conjunction with the enumeration of perils taken from the preamble to the policy, viz.—

(1) Fire (whether resulting from explosion or otherwise) not occasioned by or happening through—

(*a*) Its[1] own Spontaneous Fermentation or Heating or its undergoing any Process involving the application of Heat,

(*b*) Earthquake, Subterranean Fire, Riot, Civil Commotion, War, Invasion, Act of Foreign Enemy, Hostilities (whether War be declared or not), Civil War, Rebellion, Revolution, Insurrection or Military or Usurped Power,

(2) Lightning;

(3) Explosion, not occasioned by or happening through any of the perils specified in 1 (*b*) above,

(i) Of Boilers used for domestic purposes only,

(ii) In a building not being part of any Gas Works, of Gas used for domestic purposes or used for lighting or heating the building

If the contribution condition has been a fruitful source of disagreement amongst insurers themselves this question of exceptions has been still more a cause of friction between insurers and insured. The various qualifications and the existence of exceptions to the exceptions have been a source of difficulty to the layman and have engendered an irritation which readily turns to a suspicion that the policy conditions are artfully designed by the insurers with a view to avoiding liability on a pretext. That such is not the case is apparent enough to anyone who knows how frequently *ex-gratia* claims are met by the offices in connection with these exceptions—perhaps too frequently.

Although broadly speaking the protection afforded by both the standard and pre-standard policy forms is the same, the former presents the contract in a different and more lucid form.

The re-arrangement of the wording has affected the "exclusions" condition more than any other and it must in both cases be considered in conjunction with the relative policy preamble.

Perils Excluded (*a*).

The preamble to the pre-standard policy states that on payment of a premium the insurer will pay or make good loss or damage to the property insured that "shall be destroyed or damaged by fire or lightning."

[1] "Its," meaning "the property's."

Now compare this brief statement first with the full wording of the pre-standard "exclusions" condition and then with the "standard" perils set out in the N.B. above.

Condition 3 (*pre-standard*)

3. This Policy does not cover
   - (*a*) Money, securities, documents, business books,
   - (*b*) Loss or damage occasioned by or happening through subterranean fire, earthquake, invasion, foreign enemy, riot, civil commotion, military or usurped power,
   - (*c*) Loss or damage to property occasioned by or happening through its own spontaneous fermentation or heating, or its undergoing any heating process,
   - (*d*) Loss or damage by explosion, except of gas used for illuminating or domestic purposes in a building in which gas is not generated and which does not form part of any gas works, or of boilers used solely for domestic purposes,
   - (*e*) Loss by theft during or after a fire,
   - (*f*) Goods held in trust or on commission, Explosives, Manuscripts, stamps, patterns, models, moulds, designs, plans, drawings, } unless the same be specially mentioned in and insured by this Policy.

It will be observed that under the pre-standard policy destruction or damage due to certain forms of explosion is in fact included in the scope of the policy, by the condition that deals with risks and property the policy does not cover.

Confusion in the mind of the policy-holder can be appreciated! The standard policy has therefore made great strides in clarifying the contract, and it is necessary to consider the alterations made and the effect they have had on the contract.

The transfer of excepted perils from the "exclusions" condition to the policy preamble indicates clearly the actual protection provided in respect of loss or damage by three perils, viz. Fire, Lightning, and Explosion.

Under the pre-standard policy the insured had only to prove that his property had been destroyed or damaged by fire or lightning to make a claim. If in fact the loss had been occasioned by any of the excepted perils then it rested with the insurer to prove that this was so to avoid payment.

This was well exemplified in the case of *GlikstEN* v. *State Assurance* where enormous damage was caused in a timber yard by a fire said to have been raised by rioters. There had been serious labour

disturbances immediately prior to the fire pointing to this cause, but the insurers were unable to prove that the loss was due to an excepted peril.

The standard policy, however, transfers the whole burden of proof on to the shoulders of the insured, for he has to show that his loss was due to fire, lightning, or explosion as defined in the policy. In other words it would appear that if necessary he has to prove that his loss was not caused by any of the excepted perils.

The definition of "perils" is now so clear that the exclusion of destruction or damage by "explosion (except as stated on the face of the policy)" seems to be redundant.

The preamble defines the forms of explosion damage that are covered and states that fire damage resulting from explosion is within the protection of the policy. Nevertheless the exclusion places it beyond all doubt that, apart from explosion of domestic boilers, of gas used for domestic purposes or lighting or heating, the effects of blast concussion or shock due to explosion are not within the scope of the insurance.

Property Excluded (*b*).

It will be noted that the exclusions relating to property are qualified by the words "unless specially mentioned as insured by the policy." This indicates that the insurers wish to be aware of the existence of such property as part of the subject-matter of the policy if it is intended that it shall be insured.

Taken individually it will be seen that there is a variety of reasons for the general exception of these classes of property.

Goods in Trust or on Commission. The point to be elicited is whether the insured is legally liable for loss or damage to the property insured. If there is no such responsibility for the safety of the property, then strictly there can be no insurable interest (see definition, page 12) and consequently no liability on the part of the insurers.

Despite this, moral or accepted responsibility is regarded in practice as sufficient grounds for insurance by an employer of tools, clothing and personal effects of employees whilst on his premises.

Generally speaking, however, the "bailee" of goods, that is the

person to whom they are entrusted for custody, repair, etc., is not liable to his customer if the goods are damaged or destroyed by fire, unless there are circumstances of gross negligence disclosed—a question which has to be settled by recourse to law. The classes of bailee who are responsible are (1) innkeepers, under statute but only to the extent of £30, (2) common carriers, (3) pawnbrokers (to a limited extent only), (4) persons engaged in trades where it is customary, e.g. grain wharfingers (see p. 36), and (5) persons who deliberately make themselves responsible, such as some laundry-keepers whose bills often contain a notice to that effect.

It was formerly the practice to decline to accept goods in trust unless there was an undoubted legal responsibility and the words " for which the insured is responsible " were inserted to emphasize this, but under modern requirements this attitude has been very much modified. It is seen for instance that if the proprietor of a garage desires to take out an insurance on cars left with him for custody or repair there is nothing immoral in his doing so or in the insurers accepting such business. It is true that, in the absence of carelessness on his part, or that of his employees, a garage-keeper is not actually responsible, but on the other hand he does stand to suffer in reputation and custom if his customers' cars are destroyed whilst in his charge, and it is reasonable that he should wish to protect himself against such resulting prejudice. The insurers on their part are not entering into an unattractive contract as, generally speaking, most of the cars will be already insured by their owners elsewhere, and the wording is usually so phrased as to throw the primary liability on to these individual insurances.

A form of fire insurance specially designed to meet the needs of garage proprietors is available (Appendix III (*f*)). This covers the garage proprietor's legal liability for losses due to negligence of the insured or his employees. The sum insured is based upon the capacity of the garage, the number of vehicles that can be housed being multiplied by a fixed amount.

It will be noted that this policy covers the risks of both fire and explosion.

Money. This comprises all forms of legal tender and here again modern practice provides facilities for insurance. The "comprehensive" policy for private residences covers money to the extent

of 5 per cent of the amount insured on contents but not more than £25 unless specially arranged. Money is frequently insured by trade and industrial policies subject to a limit of liability, and in the case of large sums to a condition that the property is covered only whilst in locked safes.

Securities. It is not possible to insure securities for their face value, but they may be insured to the extent of the cost of materials, labour and services necessarily expended in their reproduction.

Stamps. These fall into two categories. Postage and Revenue stamps may be insured for their face value although as regards revenue stamps which are purchased usually at regular intervals from the same source, the authorities will in most circumstances replace without additional expense to the insured, stamps destroyed by fire.

Stamp collections, however, present a special problem, and the main object of the exception is to elicit the existence of and to secure an adequate rate for property of this description.

It is necessary to establish a basis for settlement at the outset and this is usually a percentage (approximately 50 per cent) of catalogue price, with a limit on any one stamp. Stamps not fixed in albums are not, as a rule, insured.

The perishable nature of the property and the difficulties of assessment necessitate these terms.

As an example, suppose a rare postage stamp flutters out of an album on to the fire.[1] No trace of it remains; its value is probably highly controversial and (quite honestly) greatly overrated by the collector, partly perhaps because of some sentiment attached to the circumstances of its acquisition. Suppose it be one of a "set," then there is a consequential loss on top of other considerations. It is evident that in the absence of a predetermined basis for settlement dissatisfaction on the part of the insured must be anticipated.

Documents, Manuscripts, Business Books, Patterns, Models, Moulds, Plans, and Designs. Similar considerations apply to the exceptions of this property and the object again is to elicit the existence of the property and to establish an equitable basis for settlement.

With the inclusion of property of this nature in the policy, a

[1] See Definition of Fire, page 14.

limit is applied to any one article or alternatively the insured's right of recovery may be restricted to the cost in materials, labour, and services necessarily expended in reproduction.

An example will explain the necessity for imposing some form of "limit." The contents of an office including maps, plans, and drawings were insured for £1,000 at 2s. per cent, with a limit of £5 on any one map, plan, or drawing. The insured objected to the limit, and as a consequence it transpired that £800 of the total amount insured applied to a number of unique and unfinished maps on highly perishable material. The insurance was then re-arranged into items, and a higher rate obtained in respect of the maps. Had no limit been applied the insurers would have been unaware of the real nature of the risk.

Explosives. Here again the object of the exception is to secure information of their existence and to secure an adequate rate.

Marine Insurances (*c*).

Prior to the issue of the standard policy this condition then known as the "marine clause" was attached to appropriate policies.

It will be evident that in the import and export of merchandise there may be for short periods overlap of cover under fire and marine policies. In the absence of an agreement between fire and marine underwriters each insurer seeks to place full responsibility upon the other for fire loss during the time that both policies attach. That the insured would be denied recovery from one or both is unthinkable.

Theft. It will be noted that this exception is not made in the "Standard policy," presumably because it is considered unnecessary. It may here be explained that there is a legal doctrine in connection with insurance generally under which it is held that a claim can arise only when the *immediate cause* of the loss is the contingency insured against. The remote cause or the "cause of the cause" will not be looked to. Thus in a case mentioned in Bunyon, "where a cotton mill was burnt down, leaving the ruins —a lofty wall adjoining the assured property—standing in a dangerous state, and the mill owner, notwithstanding a warning on the subject, neglected to secure it, it was held that the insurers were not liable for damage done by reason of the fall of the wall during

a violent gale. Had the damage been done by the falling of the wall during the fire, it would no doubt have been held otherwise but the fall of a house otherwise than from the action of fire is not covered by a fire policy."

Assuming therefore that pilferers entered the back door of burning premises and made away with goods belonging to the insured there would, if this doctrine of " proximate cause " is correct, be no liability under a fire policy for the loss involved seeing that fire was only the remote cause of the loss, the proximate or immediate cause being theft. If, however, the goods were stolen during removal from the burning premises the matter would certainly, in equity at any rate, demand different treatment, for it would obviously be unfair that the insured should suffer through his attempt to mitigate the extent of the loss. In this and other ways it might be dangerous to press this doctrine too far. We might find ourselves contending that water damage through extinguishment could not be admitted as covered by the policy.

Condition 4. Proof of Loss

On the happening of any destruction or damage the insured shall forthwith give notice thereof in writing to the company and shall within thirty days after such destruction or damage, or such further time as the company may in writing allow, at his own expense deliver to the company a claim in writing containing as particular an account as may be reasonably practicable of the several articles or portions of property destroyed or damaged and of the amount of destruction or damage thereto respectively having regard to their value at the time of the destruction or damage together with details of any other insurances on any property hereby insured. The insured shall also give to the company all such proofs and information with respect to the claim as may reasonably be required together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith. No claim under this policy shall be payable unless the terms of this condition have been complied with.

Although a large section of the public would appear to ignore the fact, it is quite clear that in a contract of insurance the party who suffers the loss can hardly expect the insurers to pay any sum he may demand in compensation without some proof that he is " damnified " to that extent. If they did do so the expense of insuring property would go up by leaps and bounds, the rapacity of the few being gratified at the expense of the many. Apart from the question of their own pockets the insurers have to consider the general body of their insured, who, after all, provide the funds for

the payment of losses, and this means a more or less strict enquiry into the nature and extent of each loss.

On the other hand, the insured who suffers loss may often well be puzzled how he is to produce proofs of the value of his property or, if it is totally destroyed, even of its existence. Nevertheless in the great majority of cases, thanks in great part to the skill, experience and tact of the professional assessors retained by the offices, a fair settlement is arrived at and the insured satisfied. If there is dissatisfaction it will usually be found to arise from the fact that the insured has not taken the pains to understand the nature of his contract, the commonest instance of misunderstanding which results from this being the idea that compensation for any property destroyed should be sufficient to replace it by new, irrespective of the actual value of the old. But to those who realize the nature of the indemnity given under a fire policy the terms of this condition will not appear oppressive, especially if the elastic nature of the provisions be pointed out to them. Thus, although *notice of loss* has to be given " forthwith "—an obvious necessity if the insurers are to have an opportunity of investigating the cause of the fire and extent of the damage—the period allowed for the production of details and substantiation is subject to extension, whilst the details themselves are only to be such as may " reasonably be required." In the writer's experience a careful exposition of this condition, as it stands, is almost always successful with persons whose confidence in the protection afforded by their policy has been shaken either by the talk of ill-informed grievance-mongers or by a deliberate campaign of advertisement on the part of those who are interested in shaking the public confidence in this direction. There is no need to slur over the condition : if intelligently read and discussed its entire reasonableness is beyond question and any attempt to avoid the difficulties by vague generalities and assurances is not only unwise but unnecessary.

Two points in this condition should not be overlooked by the student. Firstly, that the expenses of making the claim fall on the insured and are not covered by the policy. There is, however, some latitude here with regard to insurances on buildings, where it has been customary for a long time to allow the insertion of a separate item to cover architects' and surveyors' fees " necessarily

incurred" in the re-erection or reinstatement of the property. In recent years this concession has been extended so as to become part of the building item itself. This is, after all, only common sense. Someone has to pay for these necessary professional services and if the insured is willing to pay a small amount of extra premium to provide for the contingency the insurers will surely not object.

Similarly insurances on machinery and plant may be extended to include consulting engineers' fees.

In both cases, however, the additional insurances are in respect of professional services normally employed, and this does not affect the general position that the expenses of making a claim fall upon the insured.

The wording employed in the inclusion of architects' and surveyors' fees frequently ends with the words "but not including fees for the preparation of any claim hereunder."

The second point is the stipulation for disclosure of other insurances on the occurrence of a loss. Formerly it was considered essential to make this disclosure at the time of effecting the contract and there is at least one decision at law where this view was upheld, neglect to do so being deemed a failure to disclose a material fact. You will still find on many "schedule" policies the ill-punctuated phrase "insurances in other offices allowed, the particulars to be declared in event of loss." But the insurers have come to realize that the failure to disclose *cancelment* of another insurance is more likely to injure them than is failure to disclose its existence. This does not, of course, mean that the clause as it now stands in the condition is unimportant—on the occurrence of a loss such a disclosure is of vital importance if contribution is to be enforced.

This condition contains a clause under which the claimant may be called upon to make "a statutory declaration of the truth of the claim and of any matters connected therewith," a stipulation which had previously been confined to the policies of a few offices only.

Condition 7. Insurers' Rights after Occurrence of Loss

On the happening of any destruction or damage in respect of which a claim is or may be made under this policy the company and every person authorized by the company may, without thereby incurring any liability, and without diminishing the right of the company to rely upon any conditions of this policy, enter, take or keep possession of the building or premises where the destruction or damage has happened, and may take possession of or require

to be delivered to them any of the property hereby insured and may keep possession of and deal with such property for all reasonable purposes and in any reasonable manner. This condition shall be evidence of the leave and licence of the insured to the company so to do. If the insured or anyone acting on his behalf shall not comply with the requirements of the company or shall hinder or obstruct the company in doing any of the above-mentioned acts, then all benefit under this policy shall be forfeited. The insured shall not in any case be entitled to abandon any property to the company whether taken possession of by the company or not.

The powers conferred on the insurers under this condition are of a decidedly drastic nature and the rarity of any dispute as to their enforcement is a strong testimony to the tact and persuasiveness of our friends the assessors. They are authorized to deal with the property " for all reasonable purposes and in any reasonable manner," and they almost invariably succeed in convincing the insured that what at first sight seemed very arbitrary conduct is really only the logical sequence of a loss. If right of entry were denied it would be impossible, for instance, for the Salvage Corps in London to reduce the loss by taking measures to remove goods or protect them from water damage, and opportunity would be denied to the assessor of checking quantities and qualities of goods and of noting the extent of damage. In one case, an insured firm, whilst raising no objection to investigation, flatly refused to take any steps to deal with a very large quantity of goods which were suffering rapid deterioration from water damage. The assessor thereupon had all these goods removed at once to a works where the treatment of such damage is well understood, with the result that in a few days the insurers obtained an excellent price for this salvage, little less in fact than the amount which they had to pay the insured under this item.

The converse of this arrangement does not, however, apply. Whilst the insurers can deal with the goods in practically any way they like subject to the giving of indemnity to the insured, the latter cannot insist on their taking possession of the subject-matter of the policy and paying him the sum insured in full. The right to do this is known in marine insurance as " abandonment," but by this condition it is specially denied to the insured under a fire policy.

Condition 11. *Recourse to Arbitration*

All differences arising out of this policy shall be referred to the decision of an arbitrator to be appointed in writing by the parties in difference, or if

they cannot agree upon a single arbitrator, to the decision of two arbitrators, one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties, or, in case the arbitrators do not agree, of an umpire appointed in writing by the arbitrators before entering upon the reference. The umpire shall sit with the arbitrators and preside at their meetings and the making of an award shall be a condition precedent to any right of action against the company. After the expiration of one year after any destruction or damage the company shall not be liable in respect of any claim therefor unless such claim shall in the meantime have been referred to arbitration.

Insurance offices have incurred a great deal of hostile criticism as a result of the stipulation which forms part of nearly every policy that differences between their clients and themselves shall be referred to arbitration. On general grounds there is nothing very remarkable about such a stipulation: it is a very common method of settling business disputes, simple and expeditious as compared with the Courts, fair—for each side can appoint its representative if one arbitrator is not acceptable to both sides—and efficient, the arbitrators being usually chosen as men who have an expert knowledge of the trade involved in the dispute. The Courts themselves recognize the usefulness of such a method of dealing with the minutiae of claims, and the official referee to whom the judge frequently refers such details rather than employ the usual personnel and machinery of an open court, is, in all essential points, nothing but an arbitrator. So that even if there were no arbitration clause in a policy the insured would probably find that the publicity of the Courts was not available for the bulk of his case. Points of law, it is true, would be settled in Court, but so they would be under the clause, if they arose, for the Courts are still very jealous of their jurisdiction and would hardly deny a hearing to a claimant who was dissatisfied on a point of law.

An important legal question which sometimes arises is dealt with in the following quotation—

As it is provided that the making of an arbitration award shall be a condition precedent to any right of action against the insurer, the insured cannot maintain an action at law until an award has been made, but this statement must be qualified to the following extent, namely that if the insurer repudiates liability upon the ground that the policy is void, and that there is no contract at all, the arbitration clause cannot be insisted on. The insured can bring an action upon the policy. If, however, liability has been repudiated on the footing that there is still a contract, evidenced by the policy, then the insured is not entitled to bring an action before the arbitration award has been made.—*Macaura* v. *Northern Assurance*, 1925 (Sanford Cole—*Law of Fire Insurance*).

The offices indeed are well advised in resisting the demand for the removal of the arbitration condition from their policies. Its absence would mean an immediate flood of vexatious actions promoted by litigious persons or fostered by the advice of professional claim-makers. The difficulties of conducting the business, already considerable, would be greatly increased as would, in turn, the expense of insurance to the public generally.

Prior to the Standard policy there was a certain amount of variation in the arbitration conditions in use by different companies. Some restricted the reference to questions of amount, but usually the condition said either " all questions " or " any question " must be referred.

In the case of *Gliksten* v. *The State Assurance Company* mentioned on p. 47, " The State " office was selected to defend the action on behalf of all the companies interested because its policy referred to arbitration questions of amount only, and it was a matter of convenience for all the parties to arrive at the extent of the loss before action was taken in the Courts to settle the question as to the cause of the fire.

Costs are usually awarded by the arbitrator or umpire, but until recently some companies had a clause by which the expenses of the reference were divided equally between the parties. Such a clause was of course grossly inequitable as no small claim was worth prosecuting, however unfair the insurers' behaviour might be, seeing that the expenses would probably exceed the amount recoverable.

This completes consideration in the space at our disposal of the Fire policy and its conditions, but further reference will be found in Chapter VI to the excepted perils, many of which may be included in the contract on payment of additional premium.

A sound working knowledge of the contract itself is essential both to the student and to other persons engaged in insurance. It is the basis on which is formed all additional knowledge of principles and practice acquired by study and in the light of experience.

CHAPTER III

RATING AND AVERAGE

THE charges which a dealer in any commodity or service has to make if his business is to be remunerative must, in the main, be based on experience. A grower of potatoes cannot fix a price out of which he is certain of a profit before he knows what his potatoes are going to cost him, and insurers against fire are in the same position—with this difference, that the potato grower is much more likely to arrive at a correct estimate of his cost price than is an insurer. The former can usually get definite figures as to his outgo, but to the latter the only method available is to average out the losses paid over a number of years. Suppose that he took his losses over a period of twenty years, added his expenses and a fair margin of profit over the same period then, in theory, he could continue to make a profit by charging his insured, amongst them, an annual premium of one-twentieth of the twenty years' total figures.

Classification.

But, of course, the sum is not so simple as all that. To begin with he has to subdivide his total loss experience into classes of risk to ascertain what ratio each class should pay as compared with the others, for his clients are well aware that risks vary and will soon discover from the market what the approximate rate should be for their class of risk. The early insurers were moving in this direction when they proposed to charge rates of ascending magnitude for (1) common, (2) hazardous, and (3) doubly hazardous risks. But as far as we know the selection of these rates was pure guess-work with experience yet to come, and even when experience was available no organized attempt was made for many years to analyse it or to carry the division into classes farther along the road to its logical conclusion. However, in course of time extension of the original idea was bound to come and rating began to show an amount of variation which did to some extent reflect the infinite variety of risks in existence. Moreover, experience became

available to exercise a correcting influence and at length the position was attained where each of the principal classes of risk had its accepted and (more or less) appropriate rate, corresponding to some extent with the loss experience of that class—as a class.

Discrimination.

The fact that considerable variation would be found in individual risks in each class had doubtless been recognized by insurers long before classification itself had developed to any extent, but no reasoned attempt had been made to deal with this complication of the problem of arriving at an equitable system of rating. It remained for the organization known as the Fire Offices' Committee, which was first formed in 1858, to tackle the question in real earnest but even then discrimination was ignored in whole sections of business and is indeed so ignored to this day. If you doubt this compare the losses on country mansions with those on town mansions. The same rate is charged for each, but if discrimination were enforced the presence of such features of hazard as absence of water, distance from fire brigade, dangerous methods of heating, lighting, etc., would be penalized whilst provision of extinguishing appliances, telephonic communication with the brigade, etc., would be rewarded by appropriate discounts.

Rating Systems.

Let us now endeavour to frame a scheme of rating applicable to some simple type of industrial risk. We will assume that we have the requisite figures to hand in which the premiums received over a number of years are contrasted with the losses paid. From these data we can determine at sight whether the rate charged hitherto is adequate or not. Suppose twenty years' premium, £500,000, stands against £400,000 of losses. Evidently the rate is inadequate for we may assume that, roughly, £200,000 of the premium will have gone in expenses. This leaves a deficit of £100,000 and calls for an average increase in rate of 20 per cent. How can we best build up our correct average rate? We have to consider that discrimination is necessary, both as an act of fairness to the individual insured and as a protection to the insurers against the competition which the better type of risks in the class will provoke.

Assuming that 6s. per cent is the average rate required to make the class pay we might fix a minimum or, as is usually known, " normal " rate of 3s. per cent with a list of additional charges which may be expected on the usual experience of such risks to yield on the average another 3s. per cent. Thus, to take a simple imaginary case, suppose a scheme of rating to be provided as follows—

Normal	3s. %	
Extras—		
	Inferior.	*Very inferior.*
	s. d.	*s. d.*
Construction	1 –	2 –
Method of heating	6	1 –
" lighting	6	—
" drying	2 –	5 –
Height—each storey above one	6	
Hazardous processes, for every five hands engaged in them	6	

The above is crude, of course, only a few elements of hazard being taken, and provides no definitions on which the appropriate extras can be determined, but it illustrates the principle employed. But we have not finished. We want to encourage our insured to provide apparatus for the extinction of fire, to construct buildings specially designed to resist fire, or to adopt other special precautions to minimize its risk. The simplest method of dealing with such improvements, which are at present rather the exception than the rule, is to offer a graded scheme of discounts varying with the efficacy of the means adopted.

Our rating scheme thus roughly outlined is now a complete one and should secure the two-fold advantages of equitable treatment of the insured and an inducement to him to reduce the fire risk, to the benefit not only of himself but of the community, whose loss through fire waste has already been demonstrated. Such a scheme, considerably elaborated, is now worked out for the circumstances of most of the principal classes of risk, and constitutes the system of what is known as " tariff " rating. This system occupies a midway point between the so-called " scientific " method of rating adopted in the United States, in which every conceivable item of hazard is tabulated, and the old " rule-of-thumb " method of guessing at a rate and correcting it from time to time in the light of roughly estimated experience or in accordance with the pressure of competition.

"Rule-of-thumb" still governs much of our rating in the United Kingdom and any underwriter of experience, with an instinct for his business, can judge pretty closely whether a rate is correctly graded from the basis usually accepted as the "market" charge for a normal risk of the class in question. Thus, the experience on whole classes of wood-working risks has never been properly analysed and there are no figures to go on but, assuming the usual rate obtained for an average risk in one of these classes is 21s. per cent then a good underwriter will be able, with fair precision, to say whether a particular risk before him is below or above average, and to assign to it its appropriate rate, which may be 15s., 17s. 6d., 25s., 31s. 6d., or even higher. Possibly he may decline to accept at all, recognizing in the risk features which, in the light of his experience, denote the certainty of loss sooner or later.

It is easy to see that the "rule-of-thumb" method, unscientific as it is, has its advantages. It is impossible to frame any "scientific" scheme of rating which will fit all cases; here it results in hardship, there it proves inadequate. Often there is great difficulty in deciding how it shall be applied and much brain-power is expended in drafting and interpreting provisions which are sometimes necessarily liable to doubt and ambiguity. There is no way of dealing with forms of moral hazard such as carelessness, crowding and inferior management, for although it is, of course, open to any insurer to charge an extra rate for such bad features, it is exceedingly unlikely that his competitors will all do the same. The mention of moral hazards leads to another consideration, namely the fact that moral hazard, taken in all its forms, has a very distorting effect on the accuracy of the figures on which the whole system is based. A few heavy losses due to arson or deliberate negligence may seriously prejudice the entire class of risk by imputing to it a degree of physical hazard far in excess of the facts. (It is worth noting, too, that the value of these figures is also seriously upset by conflagrations, or even by fires spreading from other risks.[1] Figures of loss experience, therefore, though they undoubtedly do furnish a rough guide, must not be accepted as scientific, or as being

[1] One of the most serious factory fires of recent times, the magnitude of the loss from which will prejudice the results of the class for years, would probably have been extinguished at an early stage had not the local brigade neglected to summon assistance from others nearby.

in any way as authoritative as the accumulated statistics on which life premiums are based.) A consideration of another and less important nature is that with the use of a table for rating an underwriter's judgment tends to become atrophied and if we are also to have, as some people advocate, a "cut-and-dried" system of retention people might begin to think that underwriters are a superfluous luxury altogether. Of course, such a view would be quite erroneous; the mixture of experience and intuition which is found in a good underwriter cannot be replaced by all the tables and formulae in existence, and his estimate of a risk is often influenced by factors of such an intangible nature as to defy any attempt at inclusion in a tariff, however "scientific."

Thus, to recapitulate, we see two systems of rating running side by side in our British practice, the one relying almost entirely on individual judgment but based on rates derived from long-established practice; the other devised by collective opinion and professedly based on actual loss experience. Both have their advantages and disadvantages but the former is a diminishing force, partly owing to its inherent lack of precision but more on account of the necessity of some method by which agreement can be secured amongst insurers and excessive competition averted.

By similar agreement between insurers special terms are quoted when strict adherence to "tariff" ratings produce rates clearly out of proportion to the physical hazards involved.

As an example a motor-coach proprietor wishes to insure the building and contents of his garage for £150,000. He has in his garage a band-saw for carrying out emergency repairs to bodies of vehicles slightly damaged in road accidents. The band-saw is used as required during the busy season alone with the object of keeping coaches on the road. To apply an additional rate of perhaps 1s. 6d. per cent to the whole sum insured, in the same manner as if the machine was kept in regular use, would entail a distinct hardship, the additional cost being £112 10s. annually.

In these circumstances the additional charge would be reduced or waived.

Accumulation in Risk.

Before leaving the subject of rating we must refer to a question

which has been much debated, i.e. the equitable treatment of a combination of two or more classes of risk, or of accumulated features of hazard in one risk. The two ideas are really quite distinct but have been much confused in discussion. The latter is dealt with in practically all " tariffs " and is also usually recognized in quotations for any kind of business, but a real difficulty arises in the treatment of the former. As a simple illustration, suppose an insurance had been covering a garage at 5s. per cent when part of the building is let to a tailor, normally rated at, say, 2s. per cent. How are we to deal with the matter? Are we to say—

1. That the greater risk includes the less;

2. That the combined risk is measured by 5s. + 2s. = 7s. per cent; or

3. That each rate is partly made up of elements of risk common to both and that the rate should therefore be between 5s. and 7s. per cent.

The second idea can, we think, be ruled out at once, although, strange to say, it seems to have adherents. The third appears to be the equitable solution, but it must be admitted that the first contention is more often supported—if practice is any criterion. The fact is that in the stress of competition logical theories fall to the ground and only in comparatively rare cases—where the accumulation is too glaring to be passed over—can an office succeed in carrying an " accumulated " rate, even under solution (3). There would be no earthly chance of doing so under (2).

Adequate Insurance.

The student will not have lost sight of the principle laid down in Chapter I that accurate rating of risks is an act of fairness as between the individuals insured. There is a corollary to this proposition. Each of the insured should pay premium on the full amount at risk. Justice would be secured automatically if every loss were a total loss, but only a small percentage of losses are total and you have the curious position of policy-holders in the case, say, of private furniture, etc., obtaining cover for a greatly varying premium on goods of the same total value, e.g. assuming a value of £2,000, A will obtain for 10s. cover for all but an absolute disaster whilst B will pay 30s. more to secure himself against the remote

contingency of total loss. A is evidently obtaining an unfair advantage over B.

Naturally this aspect of the matter is not the principal consideration from the insurers' point of view, but it is a fair argument for them to use when dealing with the question as it affects them. Their own objection is that they do not secure adequate premium, and various devices have been adopted from time to time to prevent under-insurance, of which the most important is average.

Average.

The condition of average, to which we referred in Chapter II when discussing the contribution condition, stipulates that where there is under-insurance the insured shall insure himself for the amount of such under-insurance and shall contribute in that ratio to any loss he may sustain, the effect of which is that under-insurance means a corresponding under-payment of loss under the policy. Thus, supposing an insurance of £600 on property worth £900, the liability as modified by the average clause would be as in the following examples—

On a loss of	£30,	$\frac{600}{900}$ of £30 =	£20
,,	£600,	$\frac{600}{900}$ of £600 =	£400
,,	£750,	$\frac{600}{900}$ of £750 =	£500
,,	£900,	$\frac{600}{900}$ of £900 =	£600

In the last example the effect is the same as if there were no average and it will be noted that total destruction secures average automatically, whilst anything less gives an unfair advantage to the insured in the absence of average.

The insertion of an average clause in a fire policy is often greatly resented by the public, many of whom do not understand either the principle involved or the way in which it is expressed, but this feeling is dying down as the practice becomes more and more common. To-day whole classes of business are subject to average whereas during the early part of this century its application was restricted to floating insurances, i.e. those cases where one sum covers property at two or more locations. (It will be obvious that if a person has cover in one amount for property in two or more different situations he will be tempted to under-insure, as a simultaneous loss in two places is extremely improbable.)

In foreign practice average is almost universal although in some cases a modified form is adopted, to which we refer below. In home business attempts to obtain a full insurance have, in recent years, been made in other ways. Thus, in some forms of insurance on domestic property the proposer has to make a declaration that the sum named constitutes, to the best of his knowledge, a full insurance. In the case of live stock insurance on farms a reduction in rate can be secured if the insured accepts the form of average clause which is compulsory in the case of produce. (It may be noted here that live stock on farms, as also dead stock other than produce, has always been " free of average " and that this constitutes the one important exception to the rule that where one sum insured applies to a " plurality " of risks average must be enforced.)

Reference to produce on farms introduces what is officially known as " the special condition of average " but colloquially as the "75 per cent clause." The wording is as follows—

Special Condition of Average. When any sum insured is declared to be subject to the special condition of average, then if the sum insured shall at the breaking out of any fire be less than three-fourths of the value of the property in that amount, the insured shall be considered as being his own insurer for the difference between the sum insured and the full value of the property insured at the time of the fire and shall bear a rateable share of the loss accordingly.

The idea is to give easier terms than those of the ordinary or " pro rata " condition, in view of the fluctuations which necessarily occur in the amounts and prices of farming produce between one harvest and the next, and the effect is best seen by an example. Suppose a farmer's produce is worth £2,000 at the end of August and he has insured it for £1,500 ; the clause is inoperative as the sum insured is not less than three-fourths of the value. Prices rise in October and the value has increased to £2,500, without any increase being effected in the insurance, when a stack is burnt involving a loss of £100. Owing to the fact that the total insurance is now less than three-fourths the total value, average comes into play and the liability of the insurers for the loss is $\frac{1500}{2500}$ of £100 = £60. Note that the ordinary (pro rata) condition is used to measure the liability, the 75 per cent element merely furnishing the criterion which determines whether average shall be applied or not.

The concession given under the " special condition of average " also appears in varying degree in other clauses known as " 80 per

cent average," "50 per cent average," etc. These clauses are precisely similar in their working to the 75 per cent clause and are the result of compromises with the insured in various classes of risk where full average was considered to be oppressive. One or other of them is frequently associated with the granting of discounts for sprinkler installations or fire-resisting construction and is designed to counteract the tendency to under-insure on account of the protection afforded by the presence of these features.

Co-insurance.

A new method of securing adequate insurance, embodied in what is known abroad as the "co-insurance clause," has been introduced to some extent in this country recently. In the United States it is usually associated with a sliding scale of rates varying with the degree of under-insurance permitted. The terms of the clause are as follows—

> If at any time of fire the whole amount of insurance on the property covered by this policy shall be less than ...per cent of the actual cash value thereof, this company shall, in case of loss or damage, be liable for such portion of such loss or damage as the amount insured by this policy shall bear to the said ... per cent of the actual cash value of such property.

It will be seen that its operation is different from that of average in that instead of applying the fraction insurance/value to the amount of a loss, with a varying criterion (50, 75, 80, 100 per cent, etc.) as to whether the condition shall apply, the co-insurance clause allows of flexibility in the fraction by substituting 50, 75, 80 per cent of the actual value at risk for the full value, the determining fraction becoming insurance/50 per cent, etc., of value. Let us contrast the settlements under "80 per cent average" and "80 per cent co-insurance" by an example—

Value at risk £3,200—Insurance £2,500—Loss £400.

Under "average," as the insurance is less than 80 per cent of the value, the condition applies in full and the settlement would be

$$\frac{2500}{3200} \text{ of } £400 = £312 \text{ 10s. 0d.}$$

Under "co-insurance" we merely substitute 80 per cent of the value for the true value and the settlement would be—

$$\left\{\frac{2500}{80\ \% \text{ of } £3{,}200} = \frac{2500}{2560}\right\} \text{ of } £400 = £390 \text{ 12s. 6d.}$$

It will be seen that, unlike average, the co-insurance condition provides for an unlimited gradation of under-insurance with a corresponding scale of rating if desired. Whether it will ever effect a real footing in United Kingdom practice remains to be seen.

Objections to Average.

Meantime the practice of applying average is making great progress in this country and some people go so far as to advocate its universal adoption. It is open to doubt whether this would be an unmixed blessing to insurers. Policies on private property form a large and important section of our business and there is no doubt that this class of policy-holder would greatly resent the innovation, partly because he is, generally speaking, rather hazy as to the value of his property but still more because he does not understand the principles involved and objects to what he considers an unfair advantage to his insurers. (Apparently, however, he does not resent being asked to make a declaration that he is insuring for full value.) The insurers on their part are faced by the fact that the vast majority of losses on private business are very small and do not wish to go into the difficult and vexatious question as to the total value of the property at risk, nor has the suggestion commended itself to them that average shall only apply in cases of losses exceeding (say) 5 per cent of total. Their feeling is that it is better to "leave well alone" and they have the ordinary Englishman's instinctive dislike to forcing matters to their logical conclusions. One feels in fact that the universal application of average is still a long way off in the United Kingdom.

CHAPTER IV

RE-INSURANCE AND RETENTION

THE theory usually accepted as to the functions of re-insurance is that it provides (1) a means of spreading the incidence of loss beyond the boundaries to which it would be confined if each company retained the whole of its amounts at risk, (2) a method of stabilizing the income of the individual companies from year to year. This theory is more or less in accordance with the facts of practice, but it will be seen that the device of re-insurance was not in the first place adopted as a result of such considerations and that in late years there has been a strong tendency to make use of it for other, and less satisfactory, reasons.

There can be no doubt that in the minds of the early insurers re-insurance was simply a means of handing on to others a share of a liability which their funds were insufficient to meet, and it would not be until these funds had attained very ample dimensions that it was realized that the practice still remained a desirable one, for the two reasons given above. Evidently if a number of large companies had a system of mutual exchange for amounts in excess of what they felt was prudent to retain themselves, it would follow that the field was widened both in the incidence of loss and in the combined experience gained as to accurate rating and probable extent of loss. Moreover it was realized that such a system reduced the chance that a number of unduly heavy losses in one year would upset the profits of the company for that year, whilst at the same time the premium handed over to the re-insurers was balanced by the payments received for re-insurance given to it in turn.

Facultative Re-insurance.

In this way the practice of what is known by the curious term of " facultative [1] re-insurance " obtained a regular footing among the British companies and appeared indeed to have become a permanent

[1] I.e. capable of being accepted or declined. In the treaty system there is no option.

institution. Its advantages are great and may be summarized as follows—

(*a*) A wider field for the incidence of loss. The pooling of a heavy loss means very much less strain on the individual company, and the premium which it shares out to obtain this pooling is replaced by reciprocation from the reinsurers.

(*b*) The last consideration also implies a more regular stream of profit to the insurers of each group. In no business do the shareholders like to feel that the income they derive is liable to violent fluctuations and the popularity of insurance shares as an investment is in great part due to the regular earnings of the companies. (It is as well, however, to point out here that much of this regularity is due to the fact that nowadays the dividends are in great part paid out of the interest on the invested funds. At the same time this interest would itself be liable to fluctuation if the funds were often depleted to meet abnormal losses.)

(*c*) The scrutiny which the risks to be re-insured receive from the re-insuring offices is a healthy deterrent to the office which accepts direct. The temptation to accept undesirable or poorly-rated business is much less when it is felt that re-insurance would be difficult or impossible. Moreover, the constant exchange between the offices of information and ideas is a very healthy corrective to general practice, promoting sound methods and exposing unsound.

Thoroughly as the "facultative" system seemed to be established fifty years ago it was nevertheless rapidly nearing the end of its supremacy. It had occurred to some shrewd mind that a company for the practice of re-insurance only could be run on a profitable basis. It was realized that the higher loss ratio which would be experienced as a result of getting a large share of all the direct insurers' inferior business and only a small share of his better risks would be more than compensated for by the much lower ratio of expenses involved. For a purely re-insurance company would have no research or outdoor expenses and its clerical work would be mainly a matter of registration and book-keeping. The only difficulty was to induce the direct insurers to abandon their mutual system, and the ground was already paved for this.

The "facultative" system involves a lot of troublesome routine and the issue of many documents, besides the scrutiny and criticism to which we have referred above and which, though no doubt healthy, is often quite exasperating, especially when a big schedule has to be "placed" at short notice with a number of re-insurers. The only reward the direct insurers receive for all this is a commission of 20 per cent from the re-insuring offices, leaving them a margin of 5 per cent after paying their own agents for the introduction of the business.

Treaty System of Re-insurance.

The inconvenience and difficulties inherent in the facultative system became so pronounced as business increased that some simpler and more expeditious method became inevitable. Several Continental companies rose to the occasion. Re-insurance, practically automatic, was offered on terms which gave the ceding company a good commission and ample security. An entry in a book was sufficient to obtain re-insurance cover for any risk, good, bad or indifferent, up to an agreed multiple of the amount retained by the direct insurers. The British companies gladly availed themselves of this plan and its success led to the formation of companies in London offering similar terms. A further development was the "treaty," a contract between the direct insurers and a group of re-insurers, each of the latter underwriting an agreed fraction of the total re-insurance cover required.

For a time all went well with both parties to these contracts, but unfortunately the ease with which re-insurance cover could be obtained had a distinctly lowering effect on the old standard of prudent underwriting. There was a growing tendency to accept business, either undesirable altogether, or at least inadequately rated, when the bulk of it could be passed on to those who by reason of a lower expense ratio could make a profit out of it, and were prepared to pay a high rate of commission for it. This tendency coincided with, and was in great part due to, the ever-growing pressure of competition and to the modern mania for big figures, irrespective of quality. The more enlightened managements deprecate the short-sightedness of this endeavour to get the best of both worlds, realizing that the acceptance of undesirable or

inadequately-rated risks eventually reacts on the whole business. The standing of the companies suffers, rates are weakened throughout and there is an unfair discrimination in favour of the inferior type of agent. It is in fact a perversion of the original idea of re-insurance and has no relation to the true economic needs of the business. Worse still the same trouble developed even more acutely in the marine account and over a period of fifteen years ending in 1934 a dead loss of £800,000 occurred in this account on an aggregate premium income of £13,000,000. In the same period the Fire/Accident account showed a meagre profit of 1½ per cent and sixteen re-insurance offices failed with a loss of £5,000,000.

This was indeed a tragic period for re-insurers, although the years 1929-1932 were bad all round for insurers, but good was to result as the direct underwriters came to realize the unsoundness of weakening their re-insurers to such an extent.

A more enlightened policy has since prevailed with gradual improvement in re-insurers' results.

The treaty reinsurers have many advantages. They are not involved in the competition for new business nor do they incur any of the servicing costs that arise in modern insurance practice.

A comparison of the costs of "direct" and "treaty" results shows that the considerable saving in expenses in "treaty" business enables a higher rate of commission and a higher claims rate to be entertained.

	Percentage of Premium	
	Direct	*Treaty*
Claims	50	62
Commission	19	30
Expenses	27	4
Profit	4	4
	100	100

We have seen that the direct insurer in placing business facultatively is compelled to submit the terms of his acceptance to the scrutiny of each re-insurer, and is thus deterred from undertaking poor quality risks or quoting inadequate rates.

These considerations do not attach to treaty re-insurance, and whilst the speed and secrecy in which business may be transacted

is of distinct advantage to the insurer, the ease with which he may secure relief from commitments is perhaps a mixed blessing.

Treaty re-insurance is in the main transacted on a "surplus" basis, i.e. the re-insurer accepts up to an agreed multiple of the sum retained by the direct insurer for his own account.

Other types are "Quota share" and "Excess of Loss" treaties. By the former the re-insurer becomes a participant in the business undertaken by the direct insurer, accepting a fixed proportion of risks in certain classes or all business the latter transacts. "Excess of Loss" cover protects the direct insurer against the "catastrophe" risk, any loss over an agreed figure on any single occurrence being borne by the re-insurer. An excess of loss treaty is arranged at a fixed premium and may be run in conjunction with a normal surplus treaty.

Contract of Re-insurance.

With regard to the contract of re-insurance, this differs but little in its principles from that of the ordinary fire contract. There is the same necessity for the utmost good faith, especially in disclosure of material facts, although in practice this is generally narrowed down to the necessity of the ceding office stating *its own retention* or holding *on the identical property* on which it desires re-insurance. (A moment's consideration will make it clear that an underwriter's opinion of a risk will be largely reflected in the amount which he decides to retain.) Assuming there has been no misrepresentation or concealment the re-insurers will, generally speaking, have to " follow the fortunes " of the direct insurers. There is, however, a somewhat elaborate code of regulations for the conduct of " facultative " business and for the settlement of disputes arising therein. " Treaties " are a law unto themselves and vary in their terms with the exigencies of the market but, generally speaking, the direct insurers have a very free hand under these contracts and will continue to do so whilst the present competition for re-insurance business continues.

Retention.

Re-insurance having been seen to be necessary, or at any rate expedient, the next question which arises is that of degree—what is the correct amount to retain on a risk when handing over the

balance to one's re-insurers ? In the first place this will naturally vary with the premium income of the company. But it will also vary with the class of risk, the probability of heavy loss being much greater in some classes than in others. Contrast, for instance, a timber-built country saw mill and a Liverpool registered warehouse for "hard-pressed" cotton. In the former a total loss is only to be expected, in the latter the solid construction, coupled with the high ratio of salvage which may be anticipated and the efficiency of the brigade and salvage corps, will usually restrict the loss to a comparatively small fraction of the amount at risk. Probably a company which retained only £1,500 on the saw mill would be willing to keep £10,000 on the cotton. This particular illustration of variation in retention limits is also useful as a refutation of the loose statement, which one occasionally hears, to the effect that a company's retention is the amount it is prepared to lose on a given risk. This is more or less true in the middle of the scale but quite inaccurate at either extreme. The underwriter of the company instanced above may have the idea in his mind that £3,000 is quite enough to lose in one fire and he anticipates that the loss on cotton will not exceed about one-third of the whole value at risk. Why then does he not keep £3,000 on the saw mill ? Because in addition to the practical certainty of total loss such a place is peculiarly liable to ignition and he anticipates that several such risks will take fire for every one of a medium class of risk. On the great majority of classes his limit will be somewhere round about the £3,000 itself, high retentions being reserved for incombustible risks such as blocks of residential flats and offices, or for premises where fire-proof construction or the provision of sprinklers renders the spread of fire unlikely. The proximity of a good brigade is also naturally a factor of considerable importance.

From the above remarks it will, we think, be apparent that there is little or no scientific basis for the fixing of retention limits, everything depending on the underwriter's instinct, which is, of course, founded to a great extent on experience, as to the approximate amount in each class which will enable his company to stabilize its earnings and avoid undue fluctuations in any one year. Nevertheless, quite a number of people in the business insist on treating "limits" as if they had a basis of mathematical certainty

and one finds much slavish adherence to definite fixed amounts at the expense of considerable clerical time and effort. Thus, you will find persons re-insuring 29/59ths of £5,900 so as to adhere strictly to a purely empirical £3,000, or, worse still, going out of their way to re-insure 1/31st of £3,100 to attain the same uncalled-for accuracy. No two persons usually have less gifts in common than the actuary and the underwriter. There is plenty of scope for both, but the actuarial underwriter is an anomaly.

During the second world war the extensive Continental re-insurance market was closed to British companies who of necessity were compelled, as it were, to take in each other's washing.

This has not been without advantage for it has assisted the development of collective insurance (see Chapter VI), a suitable medium for wide distribution of liabilities, without excessive recourse to re-insurance and without saddling the insured with a large number of policies in identical terms but for the percentage of the total amount insured undertaken by each.

The modern underwriter, with re-insurance facilities and classification statistics far wider than any available to his predecessor, may be inclined to take an over cautious view in regard to the bigger risks.

There is a movement to consider risks in the light of the maximum loss that can reasonably be foreseen having regard for factors that tend to arrest the spread of fire. The war has resulted in a marked improvement in fire fighting arrangements both in regard to first-aid appliances and fire-brigade protection.

When the Fire Services Bill, 1947, is placed on the Statute Book the N.F.S. organization will be broken up and "fire authorities" (county or borough councils) will be responsible for maintaining adequate fire fighting and salvage facilities. It will also be the duty of the fire authorities to provide ample water supplies for brigade use, and wide powers will be given to utilize and develop any natural sources of water.

CHAPTER V

INCOME, OUTGO AND FUNDS

THE successful management of all business concerns is very largely dependent on sound financial methods, and this is peculiarly true of fire insurance. In their capacity as the managers of the funds contributed by the general body of their insured for compensation of the individuals who sustain loss through fire, the insurers are to a great extent in a position of trust. It is their duty to see that money is always available to meet the heaviest losses that can occur. This means that large reserves must be kept in investments which are not only sound but must be more or less fluid. In the case of a company starting business it requires years of self-denial and thrift to build up these reserves and it is also incumbent on companies which have attained to a sound position to watch their expenditure with the utmost jealousy lest that position be sapped by failure to maintain the necessary margin which means security for their insured and themselves.

Now the principal item of expenditure in fire insurance will naturally be the payment of losses. The ratio which this item bears to the premium income depends on underwriting. If this is sound the ratio, although it may fluctuate from year to year from reasons outside the control of the underwriter, will nevertheless maintain a fairly constant average level, with a gratifying tendency to fall in late years as the result of improvements in the construction of buildings, in dealing with hazardous processes and in methods of extinguishment.

Next in order of importance is the remuneration of the agents through whom the business is obtained. In theory this is restricted to 15 per cent of the premiums paid except in the case of certain classes of risk where a lower rate is prescribed. The average should certainly not exceed 15 per cent. Unfortunately it does.

Then come items of management expenses such as salaries, rents, advertisements, printing, stationery, etc.

Lastly, and now far from negligible, there is the item of taxation.

"Cost Price."

In a paper by Mr. Ostler (*The Cost Price of Fire Insurance*, to be found in Vol. III of the C.I.I. Journal) there will be found some very interesting statistics as to these components of a fire company's "outgo." Under the term "cost price" Mr. Ostler included payment for losses and provision for future payments. He suggested that commission might possibly be considered as part of the cost price, but it seems to the writer that, if this be correct, all other expenses should be included. The analogy between a commercial or manufacturing business and fire insurance in this respect is not really a very satisfactory or helpful one and the point is really of no importance. But it is important for the student to study these components of expenditure and compare their relative tendencies over a number of years. Now let us look at the experience in the last twenty-eight years, 1917–1944.

1886–1895. (Mr. Ostler's figures for the ten years named)—

Losses absorbed	60·6%	of premiums
Commission absorbed	16·2%	,,
Expenses absorbed	15·5%	,,
Provision for unexpired risk absorbed. . .	1·2%[1]	,,
Leaving a surplus of.	6·5%	,,
	100·0%	,,

Compare these with the decade—

1907–1916.

Losses absorbed	50·9%	of premiums	(a decrease of 9·7)
Expenses and commission absorbed	36·6%	,,	(an increase of 4·9)
Surplus being	12·5%	,,	(,, 6·0)
	100·0		

Now let us look at the experience in the last twenty-five years, 1916–1940. It has been said that fire insurance affords a good reflex of general business conditions, and these figures would certainly seem to support the statement. The sharp rise in expenses from 1918 to 1920 was balanced by record low figures in losses—people were making too much money to have fires, the cynics said—but the slump in business which suddenly set in with 1921 sent the loss ratio

[1] This item represents the average increase, over the given period of years, in the provision as a result of steadily increasing premium income. In the succeeding figures, for 1907–1916 and 1917–1944, provision for unexpired risk is neglected. The ratios are all based on home and foreign combined premiums, separate results being unobtainable.

COMBINED FIGURES OF THE BRITISH COMPANIES

(from *The Policy Holder's* annual figures. For years previous to 1917 see its issue of 24th Nov., 1937.)

Percentage of Premiums—	1917.	1918.	1919.	1920.	1921.	1922.	1923.	1924.	1925.	1926.	1927.	1928.	1929.	1930.
Losses . . .	51·7	44·7	42·8	46·8	56·4	53·0	50·5	50·9	50·1	50·2	47·5	48·5	51·8	53·1
Expenses . .	35·1	36·1	38·4	40·0	43·0	42·0	40·7	42·0	41·4	41·4	42·5	42·9	43·3	44·4
Surplus . .	13·2	19·2	18·8	13·2	·6	5·0	8·8	7·1	8·5	8·4	10·0	8·6	4·9	2·5
(Tariff and non-tariff)	100·0	100·0	100·0	100·0	100·0	100·0	100·0	100·0	100·0	100·0	100·0	100·0	100·0	100·0

Percentage of Premiums—	1931.	1932.	1933.	1934.	1935.	1936.	1937.	1938.	1939.	1940.	1941.	1942.	1943.	1944.
Losses . . .	52·4	52·9	47·4	43·7	41·8	43·4	41·2	43·3	44·1	48·5	44·5	44·0	42·7	46·4
Expenses . .	45·3	45·6	46·8	46·8	47·3	47·8	47·6	48·2	48·5	47·5	46·5	44·4	43·1	41·9
Surplus . .	2·3	1·5	5·8	9·5	10·9	8·8	11·2	8·5	7·4	4·0	9·0	11·6	14·2	11·7
(Tariff and non-tariff)	100·0	100·0	100·0	100·0	100·0	100·0	100·0	100·0	100·0	100·0	100·0	100·0	100·0	100·0

NOTE. The surplus is shown gross, against Losses and Expenses only, fluctuations (plus or minus) due to provision for unexpired risk being ignored.

(For curves showing approximate figures from 1906 to 1944, see Appendix V.)

up 10 points, whilst expenses made a bigger leap even than in the previous years. In 1922 the slight improvement in trade is reflected in the improved loss figures, whilst efforts at economy were rewarded by the turn for the better in the expenses ratio. These tendencies continued in 1923, and the years 1924–1928 also show good results, but the period 1929–1932 tells a different tale, followed fortunately by a great improvement in 1933–1935, the last year yielding a surplus of nearly 11 per cent—a matter for congratulation indeed. From 1936 to 1939 results were fairly steady, but 1940 showed a loss ratio 48·5 per cent, perhaps not unsatisfactory in the difficult circumstances of that year.

The subsequent war years produced very much better results than might have been forecast. The most satisfactory feature is the moderate loss ratio, for the reduction in expenses may be attributed partly to increase in existing business, absence of competition and depletion of staffs. Some advance is to be expected with the return of service members and the adjustment of salaries to current conditions.

The figures of the total premium income are remarkable. In 1899 the income of the British offices was £20,000,000. By 1929 it had risen to £63,000,000, a mighty increase mainly attributable to the cultivation of foreign business. (Our credit stood high after the San Francisco disaster of 1906, when all the British companies weathered the storm which so many others failed to survive.) With 1931 a big fall in income started, the total for that year being £56,000,000, for 1932 £54,000,000, and for the subsequent years about £51,000,000. This heavy shrinkage is mainly due to loss of foreign income (which amounted in 1929 to, probably, over three-quarters of the total), from business depression, the currency factor and growth of nationalism; also deliberate pruning by the British insurers. Other factors, at home and abroad, were reduction in values for insurance and cutting of rates—the last now, happily, more or less under control, thanks to wise co-operation among the companies.

Due principally to increased values the aggregate premium in 1945 exceeded the £70,000,000 mark.

Over the whole period under review the ratio of expenses (which include, for our purposes, commission) shows a steadily rising tendency; from less than 32 per cent to 48·5 per cent in 1937. The

somewhat alarming position now is that expenses take more out of the premium than losses. The economic crisis of 1931 compelled the managements to take drastic steps to check the rise, but the fall in premium income operated to thwart this. Obviously expenses cannot at once be reduced proportionately to such a sudden fall in income, but the present high charges continue to be looked upon with the greatest concern by all responsible persons in the business. They are faced with two problems, competition and expenses, which react on each other. The heavy expenses of the old companies, incurred to a great extent in research and organization, render them a fairly easy target for competition on the part of younger rivals, who rely on the correctness of current practice and rates, and, being themselves at no expense in arriving at this correctness, are able to "cut" with comparative ease any quotation made with such a handicap. The constant necessity of taking measures to meet this competition still further adds to the already heavy expenses, and so the process goes on in a vicious circle. The remedy is still to seek and the rising generation of fire insurance men are greatly concerned in finding it.

Funds.

Under the Assurance Companies Act of 1909 fire companies are under an obligation to publish certain forms of account in each year. Of these the most important from the student's point of view is the revenue account. In this are shown premiums received contrasted with losses paid and expenses incurred. But besides these payments it is necessary to set aside a fund for the payment of losses still to be incurred on the contracts made, the great majority of which are unexpired. Imagine a company to be run for one year only from 1st January to 31st December. When the doors are shut on the latter date the business is by no means at an end. Premiums have been received throughout the year and the liability under them (colloquially known as "the unexpired risk") will be a diminishing but very considerable charge on the premium which remains after paying the losses and expenses during the active year. As a matter of fact it is customary to estimate this liability as equal to 40 per cent of the premiums received during the year. We will deal with the method of arriving at this estimate later on. Let us suppose our imaginary company's figures at the end of the year are as follows—

Revenue	£	*Expenditure*	£
Premiums received . .	£50,000	Losses paid . . .	10,000
		Expenses	15,000
		Provision for unexpired risk	20,000
		Surplus	5,000
			£50,000

They now determine to continue, but at the end of the second year they discover that in spite of abundant success in getting business their surplus is less than after the first year. Losses are beginning to tell and increased premium means increased liability—

Revenue	£	*Expenditure*	£
Provision for unexpired risk brought forward .	20,000	Losses paid . . .	50,000
Premiums received . .	120,000	Expenses . . .	40,000
		Provision for unexpired risk	48,000
		Surplus.	2,000
	£140,000		£140,000

By the end of the third year things are getting into their normal stride, the increase in premiums is small and losses are now about the normal, 50–60 per cent of premium. Observe, however, the effect of the working of the provision for unexpired risk—

Revenue	£	*Expenditure*	£
Provision for unexpired risk brought forward .	48,000	Losses paid . . .	73,000
Premiums received . .	132,000	Expenses . . .	48,200
		Provision for unexpired risk	52,800
		Surplus	6,000
	£180,000		£180,000

Whereas after the second year's working an extra £28,000 had to be provided, after the third year the extra is £4,800 only. You will now realize that after the first year the 40 per cent has to be set aside on the *increase* only in premium over the preceding year. Suppose the premium decreases in the fourth year—

Revenue	£	*Expenditure*	£
Provision for unexpired risk brought forward as before	52,800	Losses paid . . .	69,000
Premiums received . .	117,200	Expenses . . .	45,000
		Provision for unexpired risk	46,880
		Surplus	9,120
	£170,000		£170,000

The provision on the expenditure side of the account is now £5,920 less than the amount brought forward on the revenue side from the previous year and the surplus benefits accordingly.

So far we have purposely omitted to mention interest on funds and dividends. A fire company conducted on sound and prudent lines will not anticipate any return on its shares for the first few years of business. The shareholders will have to wait for the position to be consolidated. Eventually when it is found possible to declare a dividend a large proportion of the necessary money will be obtained from interest on the invested funds. Under the high rates of interest obtainable until 1932 some companies found it possible to provide the whole of their dividend in this manner.

But meantime, as we said above, the position has to be consolidated. The provision of 40 per cent of current premium income is quite insufficient as a total reserve. Bad years and conflagrations have to be anticipated. The old standard of security was the possession of a general reserve of not less than the premium income, in addition to the 40 per cent for unexpired risk, and the figures of the British offices for the year 1905 show that the ratio of total funds to annual premium was as high as 146 per cent. The San Francisco conflagration in the following year reduced this ratio to 110 per cent, but this leeway was soon tackled and by 1914 the ratio had risen to 145 per cent again. The rapid increases in income which followed resulted in a lowering of the standard, and in 1921 the combined reserves, "unexpired" and "general," were only 116 per cent of premiums. Since then the system of pooling reserves for all classes of business has obscured the position and the allotted Fire funds of the companies at the end of 1940 show an average ratio of only 91 per cent to the income of that department.

Returning to our accounts: let us suppose then for the sake of illustration that the directors have reserved each year's surplus. They will have a general reserve accumulated of £22,120 which we will show on the revenue side in the fifth year's figures. These figures we will also now arrange in the manner laid down in the Assurance Companies Act, except that certain items are disregarded (*see* p. 82).

After the fifth year's working, then, the directors will be able to recommend the further increase of their general (or additional) reserve to £26,000 and the distribution of the remaining surplus

Revenue	£	*Expenditure*	£
Amount of funds at beginning of the year— Reserve for unexpired risk	46,880	Losses	70,000
Additional reserve	22,120	Commissions	20,000
Premiums received	130,000	Expenses	30,000
Interest on Funds	3,000	Amount of funds at end of year— Reserve for unexpired risk, being 40% of premiums	52,000
		Additional reserve	26,000
		Surplus	4,000
	£202,000		£202,000

of £4,000 in dividend and fees, three-fourths of this latter amount being derived from interest.

We have gone rather at length into this question of provision for unexpired risks because of the great influence it has on a company's accounts in years where growth or decrease is marked. The importance and onerous nature of such a provision had always been fully realized by young companies, but it was not until the year 1921 that it was seen how important the provision may be to old companies when a rapid fall of income is associated with a year of bad losses. At the end of 1921 many companies would have shown a heavy loss on the year had it not been for the drawback on the 40 per cent reserve (as explained in the "fourth year's" account above). Such a drawback is quite legitimate, however much one may regret that the credit could not be transferred to general reserve which, as we have seen, had fallen to 76 per cent of premiums. One only of the important companies, we think, succeeded in doing this.

Methods of Calculating "Unexpired Risk."

A great deal of attention has been devoted to this matter and there is an article in Vol. V of the C.I.I. Journal in which Mr. D. Deuchar propounds a method of an actuarial nature. Unfortunately he deals with insurances only in Britain, and as foreign premiums form considerably more than half of the total with most companies this exactitude is of little practical utility. The proportion for English business may be arrived at by assuming the premium to be equal in bulk for each quarter. Thus on the 1st January premiums in hand for current policies may be summarized as follows—

Christmas	358	days	unexpired
Lady Day	94	,,	,,
Midsummer	185	,,	,,
Michaelmas	282	,,	,,
Average	230	,,	,,

This is equivalent to about 63 per cent of the whole. Opinion is divided as to how this 63 per cent should be dealt with, some urging that the deduction of the normal expenses, say, 35 per cent, should be made which gets us near enough to the 40 per cent. To the writer it seems wrong to deduct full expenses as the bulk of these have been incurred already in acquiring, rating, re-insuring, etc. A simple and more direct method is to assess the probable losses on the 63 per cent of premium unexpired. Assuming a loss ratio of 60 per cent, then 60 per cent of 63 per cent = 37·8 per cent. The different incidence of the quarter days in Scotland, and the fact that business in that country is not so equally divided between the quarters, will somewhat reduce this 37·8 per cent for companies who do a large business in the North, say, to 35 per cent. Then another 5 per cent can be added for the expenses connected with the settlement of the losses and there is the 40 per cent, near enough. Refinements as to short period and long term policies can be neglected on the rough assumption that the two balance out. However, we have not yet taken into account the foreign premiums in which quarter days are ignored and as to which consequently one-half should be unexpired at 1st January. Here is a rough method of estimating Home and Foreign unexpired liability—

Foreign Premium $\frac{2}{3}$ of whole, of which $\frac{1}{2}$ is unexpired, leaving $\frac{1}{3}$ of whole to run.
Home ,, $\frac{1}{3}$,, ,, $\frac{3}{5}$,, ,, $\frac{1}{5}$,, ,,
Expected loss on Foreign business, say, 60% of $\frac{1}{3}$ = $\frac{1}{5}$ of whole premium.
,, ,, Home ,, ,, 50% ,, $\frac{1}{5}$ = $\frac{1}{10}$,, ,,

This gives us a total liability on the unexpired premium of $\frac{1}{5} + \frac{1}{10} = \frac{3}{10}$ or 30 per cent of the whole, to which 10 per cent can be added for expenses referred to above, or for a margin on the general grounds of "being on the right side." There is really no point in pretending to be scientific about such matters; the only scientific basis

would be the ascertainment of the exact fraction of unexpired premium on every policy on the company's books and then we should have to guess at the loss ratio—rather a considerable factor in the matter! The accepted 40 per cent is near enough for all practical purposes and still has the seal of general approval, although the tendency to-day is to issue policies for twelve months from inception of cover. The bulk, however, remain renewable at the recognized quarter days.

CHAPTER VI

MODIFICATIONS AND DEVELOPMENTS

In a paper read some years ago by Mr. S. J. Pipkin, before the Insurance and Actuarial Society of Glasgow, he deplored the fact that fire offices were breaking away from their old and proved principles by granting valued and consequential loss policies. He did not and could not foresee later developments, compared with which the departures from established practice to which he referred are insignificant in extent. These developments are mainly due to two causes, firstly to the grouping of offices practising different classes of business into composite companies with departments for practically every class of insurance, and secondly to conditions after the end of the war in 1918. With regard to the former, the first incentive arose when the scope of the Workmen's Compensation Act was extended to domestic servants. Fire offices, naturally jealous of other insurers gaining a footing in one of their most valuable preserves, determined themselves to undertake the protection of householders in this respect and started departments for that purpose. These departments were often run in a rather half-hearted manner by a staff who had had the cue to remain on the defensive and the result was naturally not very satisfactory. It was seen that the best and most effective way to get the business was to buy off the competitors before they began to acquire the fire business too. About the time this tendency set in the fact was also realized that the purchase of life offices would enable fire companies to extend their business very considerably by acquiring the connections of the former and stipulating for the fire insurance on property against which they had made advances. In a very short time the fire office pure and simple disappeared, with very few exceptions. A new class of official in the person of the general manager appeared on the scene, and the subordination of the various departments (Marine offices soon followed Life into the scheme) under him had the effect of widening the outlook of the managers of each as a result of the "give and take" necessitated by the interests of the company as a whole. The interplay of the

minds of these different experts, though sometimes perhaps not without friction, has unquestionably made for progress and efficiency.

Subsequent years have seen even greater changes in the fire business—or business conducted by fire departments—than those of the preceding twenty years, mainly in four directions—

(i) The inclusion in fire policies of various minor perils and contingencies (" Special Perils " and " Comprehensive " policies), the principal effect of which is to encourage the public to insure against minor mishaps, as opposed to the original idea of provision against a disaster.

(ii) More convenient and elastic methods of covering floating or fluctuating stocks (Declaration and Adjustable policies).

(iii) Provision for replacing depreciated buildings and plant by new (Reinstatement or Replacement policies).

(iv) More economical and efficient methods of dealing with insurances shared by a number of offices (Collective Policies). The limited issue of Blanket policies.

It will be seen that the twentieth century has brought about many changes, so that the leading men of fifty years ago would be completely bewildered if they could come to life again. What their verdict would be is difficult to say; indeed, there are many still at work who have doubts as to the soundness of some of these developments. Let us examine them for ourselves, taking them in their order of origin.

Valued Policies.[1]

(For wording of clause see Appendix III (*g*), Basis for Settlement.)

Mr. Pipkin's warnings were directed mainly against valued policies and the insurance of consequential loss, and although the results which he predicted have fortunately not come to pass, it is only because in the first place the offices have been very careful in the selection of persons to whom such contracts were granted, and in the second place they do not seem, for some occult reason or other, to appeal to the predatory class of insured.

In Chapter I we referred to Valued policies as furnishing an instance of departure from the principle of indemnity, but we saw that the existence of a valuation, if made by a capable person and periodically revised, is certainly a matter of great convenience

[1] See pages 8 and 9. Note distinction between "fixed values" and valuation as a basis for settlement.

to both parties to the contract, the principal, and very considerable, disadvantage being the heavy cost to the insured. And of course, if the policy contains a clause under which the values assigned are made subject to reasonable adjustment for depreciation or appreciation the whole contract is free from any objectionable feature. The insertion of such a clause should always be suggested to the proposer. If he objects to it he clearly does desire to benefit if he has a fire, but the class of person to whom these policies appeal does not usually wish to benefit in the actual pecuniary sense but only to avoid the necessity of paying for the wear and tear he has had out of his goods. One is bound to admit that the loss experience of valued policies has been extremely good.

Consequential Loss[1] (or Loss of Profits).

The introduction of Consequential Loss insurance came as a complete departure from the previously accepted idea that no matter how complete the cover in respect of material damage, it was always healthy for the insured to lose something following the occurrence of a fire. This new form of insurance attracted considerable business at the outset, but it has never attained the steady and widespread demand that was to be anticipated. It has shown that, in general, the insured do not look beyond material loss and are not prompted to take greater care of their property by reason of the fact that loss of income might result from its damage.

To-day the benefit of this protection is perhaps more widely appreciated although, oddly enough, it is the large businesses and industrial concerns which are most alive to the advantages to accrue in the event of loss.

The small trader, to whom Consequential Loss insurance offers an exceedingly cheap guarantee against misfortune, is surprisingly slow to appreciate the value of this type of policy. With limited resources he has less chance of weathering a severe interruption of business and cannot usually incur the additional expense necessary to maintain part at least of his trade.

[1] See also Chapter I "Extension if the Idea of Indemnity." The intent of the contract is well known, but the subject has many complications, and detailed knowledge of the operation of the contract is by no means general. The student is referred to one of the numerous textbooks now obtainable, e.g. Mr. A. G. Macken's *Insurance of Profits* (Pitman).

It is true to say that in general Consequential Loss is not bought—it has to be sold.

The original forms of cover were crude and had little direct bearing on the principle of indemnity. A percentage of the amount paid for material loss was the first form; another is payment of a daily "indemnity" for loss of use of premises. Both forms have obvious objections, but later forms culminating in the issue of the standard policy in 1939 adhere closely to the principle of indemnity.

Taken literally, the standard form provides for the "perfect" indemnity, and the broad principles of the insurance may be adapted in a variety of ways to suit the requirements of individual businesses.

There is little doubt that the popularity of consequential loss insurance will increase and additional experience may lead to simplification of the contract.

One of the principal objections of the sceptic is the apparent need to reveal the inner secrets of his business. (A proposal made by a boarding-house proprietor was withdrawn because he feared the insurers would notify the Income Tax authorities.)

"Special Perils."

In dealing with policy condition 3 (Exclusions) Chapter II, page 45, we referred briefly to the various risks excepted from the policy in its preamble. Many of these fall in the category of "Special Perils," and as such may be included in the policy subject to certain conditions and to the payment of an appropriate additional premium.

We propose to take this opportunity to consider the excepted perils more closely as we were unable to do so in Chapter II without making that chapter inordinately lengthy and deviating from its main purpose.

The term "Special Perils" extends now to include risks which have no relationship whatever to fire insurance, but which are underwritten by the fire departments.

Competition for fire business led to the advertisement of cover for a string of petty contingencies as an adjunct to the fire policy and to be grafted on to it by way of endorsement.

The natural defence was the offer of similar terms by offices whose connections were threatened, and the insurance of special perils became an integral part of fire department work.

We will deal first with the perils allied to fire and follow the order in which they appear in the policy preamble.

Spontaneous Fermentation or Heating. The most common instance of this cause of fire is seen in the case of a haystack ignited by the heat resulting from internal physical action. Various other substances will behave in a similar manner in suitable circumstances, e.g. soot, lamp-black, oily rags, coal in stacks, etc.

It should be noted that the exception does not extend beyond the property so ignited. Thus if the first of two separate haystacks is destroyed by spontaneous combustion the loss obviously is not within the protection of the policy. If, however, the flames ignite the second rick and destroy it, the loss is payable since the cause of fire was not "its own" overheating.

It is not desirable to cover hay against this peril as the temptation to stack hay in wet condition, especially in bad seasons, would be so great as to result in losses far exceeding the usually unfavourable figures for this type of risk.

Coal can, however, be covered, sometimes without payment of additional premium. The additional premium charged for extensive stacks depends upon the quality of the coals, the height and areas of stacks, and arrangements made (if any) for internal temperature tests.

With this main exception little additional cover is sought or granted in respect of this peril.

Property Undergoing any Process Involving the Application of Heat. Many familiar instances will occur to the student, such as clothes "airing," joints roasting, and the like.

The airing of clothes is usually treated as covered in the case of private house insurances, but heating processes in trade risks are on a different footing, and the policy exception is usually maintained or an additional premium charged.

Earthquake. As the British Isles are fortunately free from any serious occurrences of this kind there is little difficulty in obtaining cover at a small extra premium either against fire or shock risks or both due to this contingency.

Subterranean Fire. This does not mean the risk of property being fired by the earth's natural internal heat (although there is nothing to prevent such a construction) but by heated material such as "ballast" accumulated under artificial conditions.

The risk can be covered for a small additional premium.

Riot and Civil Commotion, etc. (also Malicious Damage). For many years cover against damage caused by rioters has been available to the insuring public. It may take the form of removal of the exception in the Fire policy or it may go farther and include, with certain minor restrictions, all damage caused by rioters.

It was clear that the public had a right to this protection and, moreover, the difficulty of establishing that a state of riot exists at the time of loss tends to weaken the exception in the policy.

The unsettled conditions that prevailed in 1918 led to a widespread demand for insurance against riot damage, and special rates and conditions based upon the regular payment of premium, year by year, were framed to meet it.

With the return of normal conditions, however, many policies were allowed to lapse but fresh demands, general or local, arose on other occasions of industrial or other unrest.

This selection against the insurers is difficult to combat, although cover is seldom granted for a period of less than twelve months. To provide short period cover even at advanced rates of premium is unsatisfactory, and in any event unfair to those who maintain regular insurance against such an emergency.

A further strong demand for cover arose in 1939 following the outrages perpetrated by the I.R.A., but in view of the fact that this body lacked legal status it was difficult to establish whether the exclusion of acts of war (see below) could be held to attach, or whether the normal riot and explosion covers afforded adequate protection to those desiring it. As a consequence a further extension was offered at a higher rate of premium to cover malicious damage by "malicious persons" without the qualification of "acting on behalf of any political organization."

Very few claims have been made in respect of fire damage caused by rioters;[1] still less in respect of other forms of damage because, happily, the movements in 1919 and 1926 that had ominous beginnings were frustrated speedily by the good sense and resistance to force by the mass of people in this country.

On the other hand, various claims have been met under fire

[1] Incendiarism by strikers and others where no actual state of riot exists is, of course, covered under a fire policy in England, in common with other incendiarism.

policies where although there was little or no doubt that a state of riot existed at the material time, actual proof was not forthcoming. Proof is a matter of some difficulty, and various elements have been named as essential to constitute a state of riot. Mr. Justice Hawkins stated these as follows—

A tumultuous disturbance of the peace by three or more persons assembling together of their own authority, with an intent mutually to assist one another against anyone who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful.

In theory the insured has a remedy against the county authorities for damage caused by rioters (i.e. the implied duty of the police force to protect his person and property), a right to which the insurers would be subrogated under the terms of the policy.

This accounts in part for the low rates of premium, but subrogation rights have not been subjected to any severe test, and might well prove to be illusory.

The lawyers might well find some escape from such a position by alleging rapacity against an office which was willing to accept a premium without running any risk, to which it might well be retorted that the low rates reflected the fact that subrogation was always a possibility.

A special condition is often inserted in riot policies or endorsements calling on the insured for details of loss within seven, or sometimes fourteen, days. This is on account of the fact that under the Riot (Damages) Act notice must be given to the County by a sufferer from riot within fourteen days. Naturally the usual thirty days would be of no use to the insurers if they desired to follow up their rights of subrogation. There are also two further special conditions, one of which is in the nature of average and limits the liability under a riot policy or endorsement to such a proportion of the loss as the amount of such riot insurance bears to the total fire insurance, whilst the other bars any claim for consequential damage.

A point to bear in mind is that it is unsatisfactory to have fire and riot risks covered by different insurers, owing to possible disputes as to liability.

" Civil Commotion " is a state of affairs which seems very hard

to define, but Lord Mansfield, referring to the Gordon Riots, said "I think a civil commotion is this—an insurrection of the people for general purposes, although it may not amount to rebellion, where there is an usurped power."

War, Invasion, Hostilities, Civil War, Revolution, etc. In 1938 due to troublous conditions on the continent of Europe it was found necessary to place beyond all doubt that hostile acts causing damage by perils insured by the Fire policy were not under its protection. A disclaimer of liability was forwarded to each policy-holder on renewal notices, and the 1938 edition of the standard policy included the excepted perils in the policy preamble.

It will be appreciated that acts of sabotage, and hostile acts with or without formal declaration of war, are perils not contemplated in the contract, and in view of the enormous potential liability involved insurers have always excepted loss from war risks.

Explosion. Under a "special perils" endorsement cover for explosion, without any qualification (other than the exception of liability for any damage which would be covered under the usual provisions of a boiler explosion policy), is added thereby to a fire policy. The question, however, as to the legal liability under an ordinary fire policy in the event of explosion has given rise to many disputes and even now the position may in certain circumstances be a difficult one, although in practice a general distinction has been drawn that the insurers will accept liability for fire damage when the fire is caused or augmented by explosion, but will not accept liability for damage due to concussion. In the standard policy this is set out definitely in the contract. The difficulty which remains is that which will probably be found on an attempt to distinguish the two kinds of damage in a building where both have occurred. It is instructive to glance shortly at some of the leading cases where the issue has been raised under ordinary fire contracts. In the *Lottie Sleigh* case (1864), a vessel of that name lying in the Mersey caught fire and a subsequent explosion of gunpowder, which formed part of her cargo, broke a quantity of glass in Liverpool and Birkenhead, and the question of liability for this damage under a fire policy arose. Under the legal doctrine that fire must be the proximate or immediate and not the remote cause of the loss (*causa proxima non remota spectatur*) it was argued that concussion of the air was the proximate

cause of the damage, fire the remote cause. The case, as a matter of fact, was settled on other considerations, but there can be no doubt that the contention was sound. (Here it may not be amiss to warn the student against relying too much on high-sounding legal doctrines, whether expressed in Latin or English. A little learning is a dangerous thing. As we saw in a previous chapter, absolute reliance on *causa proxima non remota spectatur* would lead to the conclusion that water damage in a basement as a result of a fire on the second floor was not covered under a fire policy.)

An explosion at Erith in the same year gave rise to claims for injury to property some distance away and the action *Everett* v. *London Assurance* resulted. Although there was no condition in the policy by which the explosion risk was specifically excluded, the court decided in favour of the insurers, apparently on grounds of ordinary common sense. The insurance was against fire, and although some ingenious student of physics has contended that explosion is only a very rapid form of fire, it is fairly obvious that such a contingency as concussion damage from an explosion hundreds of yards away was not in contemplation by the parties to the contract.

The next case—the classic of explosion risk—is that of *Stanley* v. *The Western Assurance Co.* (1886). Bunyon's account is as follows—

In *Stanley* v. *The Western Insurance Co.* the condition was "Neither will the company be responsible for loss or damage by explosion, except for such a loss or damage as shall arise from explosion by gas." The accident was caused by a leakage in the pipe of a still for extracting oil from shoddy, whereby inflammable gas, generated in the process of extraction, escaped and mixed with the air, and took fire at the lamps, and then exploded, blowing up the buildings, when the fire became general. The question was whether the damage was within the exception, that is to say, did the damage arise from an explosion by gas within the meaning of the condition, and it was held that the gas which exploded was not the gas such as the condition referred to, as the gas mentioned in the condition was, according to popular language, illuminating gas.

This account, however, does not refer to the main issue, which was: In what circumstances and to what extent does a fire policy cover explosion damage? The finding of the court in this case is summarized in Welford and Otter-Barry as follows—

The exception (i.e. under the policy condition) is not limited to loss by concussion . . . Thus where there is explosion in the course of a fire the

concussion damage caused by the explosion falls within the exception against explosion *even though the explosion is merely incidental to the fire*. The question was accordingly remitted to the arbitrator to ascertain how much loss after the explosion was attributable to the first fire.

The decision in *Stanley* v. *Western* was confirmed in 1917 when an action was fought, *Hooley Hill Rubber and Chemical Co.* v. *Royal*, the plaintiffs being dissatisfied with the arbitrator's award, which they sought to set aside by application to the Court on a point of law. A fire took place at the plaintiffs' works and when considerable damage had already been done the flames reached a room where "T.N.T." was stored with the result that a disastrous explosion followed on the fire. The argument was used that the explosion was merely an incident in the fire and that the whole damage was loss within the meaning of the policy. At that time the large number of works of this description where the manufacture of explosives was being carried on constituted a serious additional element of hazard and insurers generally were greatly concerned in the result of the case. Defendants' counsel accepted the arbitrator's award of £13,000 for fire loss previous to the explosion, but denied liability for that part of the damage which resulted from and after the explosion and the judge agreed, basing his decision on the previous findings in *Stanley* v. *Western*. The decision in favour of the insurers was confirmed on appeal.

To sum up: practice now is that under an ordinary fire policy fire damage associated with an explosion is usually admitted, ex gratia or otherwise, for all classes of risk. Concussion damage is covered free of charge for private insurances and in gas works, but an additional premium must be paid to cover explosion (i.e. blast, shock or concussion) damage in respect of all other insured property. The rate is usually more or less nominal, consideration being given to the fact that the fire rate itself is invariably high where explosion is to be anticipated, owing to the fact that fire so frequently follows explosion—also to the difficulty of dissociating the results of the two. Another point is the possibility of the insurers having rights of subrogation against third parties whose negligence is frequently the cause of an explosion.

This concludes the list of perils normally excepted from the Fire policy or included in it upon payment of the appropriate extra premium. The issue of the "comprehensive" policy for private

residences (referred to later) resulted in many other perils, having no connection with the fire risk, coming within the orbit of the fire underwriter. These, or some of these, are as follows—

(*a*) Aircraft and/or articles dropped therefrom.
(*b*) Impact.
(*c*) Storm and tempest.
(*d*) Flood.
(*e*) Bursting or overflowing of water tanks, apparatus or pipes.
(*f*) Subsidence.

(*a*) *Aircraft and/or Articles Dropped Therefrom.* A very real risk especially to those situated near aerodromes or "air-ports." The cover is granted at a very low rate of premium as the insured has a strong remedy against the owner of the aircraft to which right the insurer would be subrogated.

(*b*) *Impact.* Damage to the insured's property in impact with vehicles or cattle not belonging to or under the insured's control. Here again there is a remedy against a third party except when the damage is caused at night or during insured's absence, the offender making off.

(*c*) *and* (*d*) *Storm, Tempest, and Flood.* Under the customary wording for private dwellings buildings are not covered at all against floods, and the insurers are specially protected against petty storm claims by excluding the first £5 of "each and every loss."[1] There are no reservations in the case of contents. Practice is similar for other classes of property. All underwriters are naturally shy of these risks, which differ from the fire risk in that the latter may be apprehended practically anywhere, whilst the tendency to insure against damage by storm and tempest will be mainly amongst those whose property is either peculiarly exposed to the elements or is in such a condition as to be easily damaged thereby, that is to say, "selection against the insurers" is usually in evidence. These considerations apply still more in the case of flood, and each risk must be dealt with on its merits, many being quite uninsurable.

(*e*) *Bursting or Overflowing of Water Tanks, Apparatus or Pipes.*

[1] The exclusion of liability for the first £5 (or other arbitrary amount) of any loss is known as "an excess." Agreement to pay all the loss if the first £5 is exceeded is known as "a franchise." Thus, in a loss of £6, under a £5 excess the liability would be £1, under a £5 franchise the whole loss.

As in storm risks, the first £5 of any claim is excluded in the case of buildings of private dwellings. Nor are such buildings covered whilst left unfurnished. Other property is similarly treated, with a higher excess where damageable stocks are at risk.

The hard weather of the winters 1938–1946 has resulted in a very large number of claims, mainly small it is true, for damage by frost, a fact which has had quite a noticeable effect on the loss ratio of private insurances.

(*f*) *Subsidence.* This is a most unsatisfactory form of insurance as selection is always against the insurer and an insufficient volume of business is written to warrant any standard terms. Acceptance is invariably subject to satisfactory surveyor's report, and the cover is restricted to complete collapse of the site upon which the insured building stands. It does not cover settlement or any loss short of total collapse.

"Comprehensive" Policies. (Private Dwellings.)

The logical sequence of grafting the "Special Perils" on to a fire policy by way of endorsement was the issue of a policy for householders in which all the contingencies are set out, plus burglary and liability for accidents to domestic servants. One or two other "perils" are also included, also all the current extensions and privileges already granted to holders of policies on household goods, etc. Finally, after the recital of a contract, necessarily of inordinate length, is added by way of epilogue a reward in the case of those policy-holders who are unfortunate enough to get burnt alive, or done to death by burglars.

It will be seen on perusal of the contract (Appendix III) that it requires very careful study by the insured (and the student) if he is to be quite sure as to what is covered and what is not. The term "Comprehensive" is not, perhaps, a very fortunate one, as the list of contingencies on the prospectus will be found to be subject to many limitations and exceptions. The principal points to note are—

> Although comprehensive cover in respect of contents is at one rate, alternative rates are quoted for buildings according to the insured's requirements, viz. (*a*) fire risk only, (*b*) fire risk plus a limited range of additional perils, or (*c*) fire risk and a full range of additional perils.

Larceny from the person or in transit is excluded, in accordance with customary practice in Burglary insurance. On the other hand, larceny is covered at hotels, etc., and that for the full sum insured, whilst there is a further anomaly in the fact that the fire cover in similar circumstances is limited to 15 per cent of the sum insured.

The generous terms given under "Loss of Rent" may be obtained in addition to a total loss of building and contents. (This applies to certain other items, e.g. servants' goods.)

The "Extensions" and the "Liability to the Public" section require careful reading if the limitations are to be grasped. The "unoccupancy" (!) clause is also important.

Now that the agents and public have become familiar with the terms of the Comprehensive policy, the number of abortive claims has diminished and the contract certainly seems popular. The offices, on their part, having to a great extent "lived-down" any resentment which arose from misunderstandings, are happy in having secured heavier sums for insurance all round—thanks to the proposer's obligation to declare that the sum to be insured represents the full value of his property[1]—and also in having obtained burglary premium from many persons who would never have troubled about the matter if they had not been attracted by the width of the cover offered for 5s. per cent. The comprehensive policy will, no doubt, eventually replace the old separate policies altogether, except in cases of small amount.

A recent development (1939) is the issue of a policy to cover the owners of blocks of residential flats. There are special conditions necessitated by the difficult questions which arise over property-owners' liability to the public.

"Replacement" Policies.

These are sometimes known as "reinstatement" policies, but the term is perhaps unfortunate in view of the other connections in which it is found.

At one time "replacement" cover, meaning the amount payable beyond a straightforward indemnity, was often the subject of a

[1] Note that this declaration is really a stronger form of protection for the insurers than average, as—legally—a false or inaccurate declaration will invalidate the whole contract.

separate policy. For example, the insured held a fire policy for £7,000 covering the full value of his machinery and a fire (replacement) policy for £5,000, if it was his estimate that £12,000 would be required to install new machines in place of those at risk.

Views in regard to replacement insurance have changed considerably, and this extension of the idea of indemnity is now widely accepted. In these days of rapid change it is not too much to suggest that repairs to an old machine damaged by fire may well exceed the cost of a new machine capable of performing the same work.

This subject has been referred to in Chapter I, and consideration of the wording (Appendix III (*h*)) will afford the student a full understanding of the cover provided.

"Declaration" and "Adjustable" Policies.

The introduction of these contracts is due to the desire of the public for simpler and more elastic cover for stocks and merchandise. There was objection to the fact that a maximum sum had to be insured to cover possible fluctuations during the contract, especially where property floats between several risks at different rates and a margin had to be given to cover these fluctuations in both amount and situation. There were, therefore, two problems to overcome—

(*a*) That of dealing with *fluctuations in value*, the result of variations in either prices or quantities, but in each case affecting the amounts to be insured.

(*b*) That of dealing with *fluctuations as between situations.*

Let us first take (*a*). The only method, until quite recent years, of dealing with fluctuations in amounts was by the issue of short period policies to cover excesses beyond annual standing insurances, the policies being taken out for the probable periods during which the excess would continue. The offices did undoubtedly at one time charge somewhat excessive rates for short period insurances, the proportions of annual rates until some thirty years ago being on the following lines—

One month	—¼ the annual charge	with other periods at similar ratios.
Three months	—½ ,, ,,	
Six months	—¾ ,, ,,	

These proportions were then reduced to—

One month	—$\frac{1}{5}$ the annual charge	}	Etc.
Three months	—$\frac{2}{5}$,, ,,		
Six months	—$\frac{7}{10}$,, ,,		

The arguments for these rather heavy rates were—

The increased clerical expense of issuing several policies in the year instead of one.

Increase of hazard at times when stocks are high and crowded.

The actuarial aspect of the matter—the premiums were held for shorter periods by the insurers.

There is, however, no doubt that the " loadings " were excessive, a fact which was recognized soon after the last war by the reduction of short-period charges to an excess over *pro rata* charge of 5 per cent of the difference between the *pro rata* premium and the annual premium. Thus, three months' insurance on an annual rate of 10s. is now 2s. 6d. plus 4½d. (5 per cent of difference between 2s. 6d. and 10s.) = 2s. 10½d.

But by this time the " declaration " policy was already knocking at the door. The attractive nature of such a contract appealed at once to merchants and other holders of fluctuating stocks, nor did the underwriters and others then interested in this form of competition fail to make the most of the advantages it offers to the insured. The older offices naturally objected to a proposition which threatened to leave them very much at the mercy of unscrupulous persons, and which in any event meant reduction in premium receivable and extra clerical work. They accordingly brought out a counterblast in the form of the " adjustable " policy, but this has achieved no great success, and early in 1924 the offices accepted the principle of " declarations."

We see that on contrasting Adjustable and Declaration[1] policies—

The former is simply an ordinary policy on stocks (except farming stocks) or merchandise, the total of which can be varied at any time as desired by the insured with an adjustment of premium *pro rata*, the only stipulation being that such adjustments must be notified to and agreed by the insurers. Thus as a simple example

[1] Lloyd's underwriters term the latter an " adjustable declaration " policy and some confusion has arisen from this. However, it is now rare for the companies to issue the former at all.

a policy taken out for £10,000 can be reduced in mid-term to £5,000 and increased again at nine months to £7,500, on a premium *pro rata* of £10,000 for six months, £5,000 for three months and £7,500 for three months. Under the old system short-period rates would have been chargeable, and if three separate insurances had been taken out they would have been

£10,000 for 6 months	= $\frac{7}{10}$ of annual premium on				£10,000
5,000 for 3 months	= $\frac{2}{5}$	,,	,,	,,	5,000
7,500 for 3 months	= $\frac{2}{5}$	,,	,,	,,	7,500

which is the equivalent *in premium* to an annual insurance of £12,000. If a fixed annual policy of £5,000 had been taken out first, the insurances would have been

£5,000 for 1 year	= annual premium on				£5,000
5,000 for 6 months	= $\frac{7}{10}$ of annual premium on				5,000
2,500 for 3 months	= $\frac{2}{5}$	,,	,,	,,	2,500

the equivalent of £9,500 annual.

Of course, this short-period loading was very materially reduced by the introduction of the 5 per cent basis mentioned above, but this concession did not take effect until after " adjustable " terms had been granted.

Now the declaration policy is devised on quite a different basis—

The insured takes out his policy for the maximum amount he considers likely to be at risk in the ensuing year.[1]

On this amount he pays forthwith a " provisional premium " of 75 per cent of the full annual premium.

Once a month (usually) he furnishes a declaration of amount then actually at risk.

At the end of the year an average is taken of the twelve monthly declarations and the premium actually payable is calculated at the agreed rate on that average. The difference between the premium so ascertained and the 75 per cent deposit or provisional premium paid at the beginning of the year is then adjusted between the parties. There is, however, usually a stipulation that in any event not less than 50 per cent of premium on the maximum amount shall be paid to the insurers.

There are several points to note—

[1] Often for more than estimated maximum to provide margin for abnormal circumstances or increased values.

1. The great advantage of declaration policies over adjustable lies in the *margin* provided under the former.

2. The *liability* of the insurers under a declaration policy is always that of the maximum amount, i.e. the sum insured on the face of the policy. Certainly if this were £10,000 and a claim were made for that amount the day after a declaration had been made for £8,000, explanations would have to be given, but the maximum *liability is there throughout.* The idea still seems to obtain that the liability varies with the declarations, but this is quite erroneous. The declarations are merely part of a device to ascertain the measure of actual cover given, as averaged throughout the year.

3. There is nothing to prevent the insured from taking out a policy for double the amount he anticipates to be at risk. Under the normal terms he is committed to payment of only half the premium on the maximum amount, and the only drawback is the initial deposit of the three-fourths of the full premium. If the actual amount is found at the end of the year to average only half the sum insured he will get back one-third of the initial deposit, i.e. 25 per cent of the full premium.

4. As a result of the facts stated in (3) the insured will naturally tend to take out his insurance with a good margin, and this fact will no doubt have its effect on re-insurance, as the ceding office will be enabled in many cases by the retention of a fixed *sum* to pass the disadvantage due to loss of premium on to its re-insurer.

5. It is necessary to provide for automatic reinstatement of any amount by which the policy is reduced after a loss. To illustrate this point, take the case of a payment of £2,000 for loss under a policy for £10,000. Under an ordinary policy the full annual premium on this £2,000 will have been settled in advance and earned in full on payment for the destruction of property of that value, the total insurance being thereby reduced to £8,000 (*see* p. 18, last para.). But under a declaration policy the premium on the £2,000 from the date of the fire to expiry would never be paid, as the amount of the destroyed property would not be included in any declaration subsequent to the fire. A clause is, therefore, inserted in the declaration policy to secure payment of the full year's premium on any amount by which the contract is "fulfilled" owing to the settlement of a loss.

6. It is usual to make declaration policies subject to average, but it would appear that little, if anything, is gained by this as temptation to under-insure is reduced to a minimum.

It will be seen that adjustable and declaration policies *revolutionize the method of levying premium.* As stated above, if complete security was desired it was previously necessary either to take out a policy for the maximum amount possible in the ensuing period of insurance and to pay in full on that amount (usually before liability commenced), or to supplement a smaller insurance by short-period policies as required. Now it is possible to pay on actual cover received (in the case of adjustable policies) or in a close approximation to it (in the case of declaration policies). Payment on experience is substituted for payment on an outside estimate; otherwise principles are but little affected.

What are the disadvantages? In each case less premium will be taken by the insurers in any event, and if unfair selection of dates is made by the insured under declaration policies there will be further loss of premium. It may be pointed out, however, that there is a cycle of cause and effect in fire insurance—

Competition means cut rates or reduced premiums.

Reduced premiums mean loss of profit and the market is narrowed by failure of unstable offices.

Loss of profit and reduction of competition stiffens rates again.

If fire insurance be looked on broadly as a pooling device worked for the whole body of insured by the insurers, then there is only a certain bulk of premiums out of which losses have to be paid, and if that bulk falls off through diminution of premiums by declaration policies, then rates will have to be stiffened to make up the balance.

Declaration policies have the advantage that the adequacy of the insurance is under regular review. If the insured makes a declaration close to or above[1] the maximum sum insured he is invariably advised by either his broker or the insurer to increase the amount of the policy. Conversely, if his stocks show a consistent drop in value he will be advised to reduce the sum insured.

[1] When a declaration is made above the maximum sum insured the latter amount must be entered as the declaration for the purpose of premium calculation.

Policies for "Maximum Value with Discount."

Another method of dealing with fluctuation in values has been introduced, its operation being confined so far to the cotton and allied trades in the North of England. It is known as the system of "Maximum Values with Discount," and is simply this: the insured gives a specific undertaking to insure for the maximum possible in the ensuing year, in return for which he receives a discount off his premium of 33⅓ per cent. This is almost as if the insurers said to the insured, "Look here, instead of bothering ourselves with making and checking declarations, we will give you a good discount and done with it." And probably it will furnish quite as accurate a measure of the quantity of risk run as the more elaborate declaration method.

Floating Stock Policies at an Average Rate.

We will now turn to (*b*), the question of dealing with fluctuations between situations, the problem of how best to cover at an equitable rate property which floats between two or more separate risks, e.g. merchandise in a number of warehouses at different rates. The old method was quite simple—the insured paid premium at the rate of the most hazardous risk in the range and the insurance was made subject to average. Average remains, and one does not see how it can be dispensed with, but in many cases we no longer get the highest rate in the range. Instead of this an average rate is arrived at by pooling the premium on the different ranges and working out this charge as a percentage on the total figures. This system has been in occasional use for years past in non-tariff business, but is now becoming the generally accepted method. The difficulty is to find stable figures from which the percentage charge can be derived, and the usual method is to work on the previously existing figures of insurance. But such figures vary, certainly from year to year and usually much oftener. Consequently some advocate basing the rate on the annual stocktaking figures. These, however, may well be misleading, seeing that the occasions of stocktaking may mean temporary accumulations in certain situations where the rate may be unfairly high or low—more likely the latter—as compared with normal conditions. Thus, in some manufacturing risks the stock may be concentrated at stocktaking in a warehouse at a low rate.

To ensure that an equitable floating rate is obtained details of amounts are called for under three headings—

(i) Maximum amounts anticipated during ensuing year in each risk.

(ii) Stocktaking figures.

(iii) Divisions of existing insurance.

The rate was generally worked out on (iii) and adjusted in the light of the facts disclosed by (i) and (ii), but as the system developed (ii) has become the most reliable basis. In most instances there is little variation in the rates produced under the three headings.

Reference was made above to policies for maximum values with discount, and where a floating insurance is involved with these policies a special and ingenious device is used to obtain a fair rate. The insured has to declare maximum possible value *in each risk* at any time during the ensuing year of insurance, and also maximum possible *total* at any time.

Let us take an example in which the declarations as to maxima anticipated are—

In (Warehouse)	W.	£5,600	But total in all at no one time likely to exceed £16,000, for which amount policy is taken out, floating over all the buildings.
In (Process Depts.)	P.	6,000	
	Q.	2,000	
	R.	2,400	
In (Despatch Dept.)	D.	7,000	

The method of rating is as follows—

	£		£	s.	d.
P (highest rate) . . .	6,000	at 21s. =	63	–	–
Q (next ,,) . . .	2,000	at 15s. =	15	–	–
R (,, ,,) . . .	2,400	at 10s. =	12	–	–
D (,, ,,) balance . .	5,600	at 5s. =	14	–	–
	£16,000		£104	–	–

(The lowest-rated building W, at 2s. 6d. per cent, is not called into account, the £16,000 being made up without it.)

On the gross premium of £104 a discount of 33⅓ per cent is allowed, in accordance with the terms of the policy, giving a net premium of £69 6s. 8d. for a policy of £16,000, floating. Average rate, 8s. 8d. per cent. The policy contains a stipulation that liability in P, Q, and R is limited to £6,000, £2,000, and £2,400 respectively, in spite of the fact that the policy is a floater for £16,000. This stipulation secures to the insurers two advantages; firstly, they

are protected against under-estimates in the highly-rated parts of the risk; secondly, they have some guide as to retention limits.

It seems likely that this system will eventually have to be applied to all floating insurance at an average rate if a fair quota of premium is to be obtained.

A point which arises with floating insurances at an average rate is the necessity for identity in wording and range of all policies applying to the property. Otherwise an insured with a floater may, on increase of value in higher-rated risk, take out a specific on the lower-rated part with other insurers, transferring the heavier liability to the floater, e.g.—

Position at first.

Value in factory,	£10,000 at 20s.		covered by a policy for £20,000 floating at 12s. 6d. per cent with insurers X.
,, warehouse,	10,000 at 5s.		

On cover for an additional £5,000 being required in the factory, the insured can take out a policy for £5,000 in *warehouse* with insurers Y. The property is again fully covered, but insurers X, in blissful ignorance, are now liable for

£15,000 in warehouse	for which they should get a rate of 16s. 3d. per cent, instead of 12s. 6d.
5,000 in factory	

"Excess" Policies.

We have already referred to these in discussing the standard form of policy in Chapter II (p. 43). It may be here remarked that excess policies of the crude form there described are but little in evidence. (The term "excess" in this connection should not be confused with "excess" as defined on page 95.)

Collective Policies.

One of the most important of recent developments is the adoption by all companies of the collective form of policy.

There is nothing original in the idea, the form being similar in many respects to that issued by Lloyds underwriters.

Previously if an insurance was shared by twenty companies it was necessary to prepare as many policies each in identical terms but for the varying proportions.

At each renewal and on the occasion of any alteration this multiplication of work was carried out despite the fact that the insured seldom took notice of more than one policy—that of the leading office.

The Collective policy disposes of most of the former wastage of effort as a single policy is prepared for the total amount covered by the "insurers"[1] each signing the document for its proportion in the space provided.

Alterations by endorsement and the issue of renewal notices and receipts become the responsibility of the leading office who sign on behalf of all insurers with their prior authorization.

There is little to concern the student in the terms and conditions since they follow those of the standard policy except that all singular references to "company" are displaced by the collective term "insurers."

The obvious convenience to all parties, especially the insured, and the speed and economy of this method must lead inevitably to the gradual elimination of the multiple policy system.

Blanket Policies.

The issue of "blanket" policies arises from a limited demand to insure all contents in one item without the customary divisions between fixtures, machinery and stock, also to extend the range of cover to include property at any part of the insured's premises without regard to separate buildings or groups of buildings.

Sometimes it is required to include buildings and rent as well to apply to widely dispersed premises.

Crude in the extreme this form of policy offers little if any benefit to the insured, and is detrimental to the best interests of the business. To counterbalance the application of specific liabilities to individual items blanket cover is of necessity subject to average[2], and the problem of assessing the value of all property at risk and

[1] Lloyds underwriters cannot participate in the collective policy of the companies, and if 30 per cent of an insurance of £1,000,000 is placed at Lloyds the Collective policy will be prepared for £700,000 "being 70 per cent of the total of each of the amounts" in the specification of £1,000,000 incorporated in the policy.

[2] Some policies omit average but include an undertaking that the property is insured for its full value.

arriving at a figure agreeable to both parties is left to be solved on the occurrence of a loss.

The blanket policy is merely an extension of floating insurance beyond the bounds of reason and its widespread adoption would result inevitably in an increase in premium. It would also be impossible for the insurers to calculate potential liabilities with any degree of accuracy.

So far as stock items are concerned the need for floating and adjustable insurances is well known, but for buildings, fixed plant and machinery there is no valid reason to warrant any departure from normal practice.

Sprinkler Leakage Policies.

Leakage and accidental discharge of water are not risks inherent in sprinkler systems, the efficiency of which is reflected by the discounts allowed off fire insurance premiums where this protection exists.

Nevertheless accidents occur due to a variety of causes, mechanical injury to piping or sprinkler heads, freezing or the exposure of sprinkler heads to heat other than that resulting from an outbreak of fire.

Water accumulating from a small leak (insufficient loss of water to operate alarm gong) may do considerable damage if the leakage occurs during any time the premises are unoccupied and a demand for cover against this contingency is met by the Sprinkler Leakage policy.

The insured can elect to insure on the basis of the full value of building and/or contents at a nominal rate of premium ranging from 1d. to 1s. 6d. per cent according to the nature of the property covered or he can secure cover on a "first loss" basis the premium for which is assessed according to the number of sprinkler heads and the amount of indemnity required.

Loss due to freezing whilst the premises are vacant or unoccupied, and losses due to explosion and blasting operations or alterations or additions to the buildings or the installation itself are not covered.

The insured will not be able to recover losses due to his own neglect

in omitting the lag piping in roofs or exposed positions or his failing to remedy known defects.

Water damage incidental to the operation of sprinklers on the outbreak of fire is within the protection of the fire policy in the same manner as water from firemen's hoses or chemicals employed in extinguishment. Such damage is therefore excepted from the Sprinkler Leakage policy.

CHAPTER VII

MISCELLANEA

VARIOUS miscellaneous points remain to be discussed in this chapter.

Appliances for Extinguishment.

As we have seen when discussing rating, it is customary to allow discount to insured who provide apparatus and means for the extinction of fire. This is in the best interests of all concerned, and the extension of the practice deserves every encouragement from the offices, particularly in the case of sprinkler installations, the merit of which is abundantly proved, and reflected moreover in the greatly increased retentions which underwriters are prepared to sanction where sprinklers are installed.

At the same time, it is well to point out that there is a reverse side to the medal, especially in the case of non-automatic appliances. The value of these varies considerably with the class of risk. In a factory it is much more likely that someone will be at hand to use " first aid " than in a warehouse, whilst in all classes of risk automatic devices are alone of use after working-hours when the premises are left unattended. This last fact, of course, explains the liberal rates of discount for automatic alarms and for sprinkler installations.

Another adverse feature of ordinary appliances is the risk that valuable time will be wasted in endeavouring to make use of them instead of first calling the brigade. The heavy loss sustained in a London hotel fire some years ago was mainly due to this cause, the staff vainly endeavouring to quell the fire with buckets and extincteurs for some minutes before it occurred to anyone to call the brigade. Hydrants also have been known to be used by amateurs in such an unnecessarily prodigal manner as to treble the loss by unnecessary water damage. Untrained fire brigades have occasionally been accused of a similar excess of zeal.

In comparing automatic with non-automatic appliances it is well to point out that the two should be at their best in conjunction. The opening of one sprinkler head for instance may do considerable

damage, much of which could have been avoided by the prompt use of one bucket of water. This aspect of the matter is recognized by the refusal of the offices in many classes of risk to allow a discount for sprinklers unless a certain number of non-automatic appliances are also provided.

Brigades and Salvage Corps.

The question of the expenses and upkeep of fire brigades has been one of perennial difficulty to the fire offices. There is no real reason why the companies should be at any expense in the matter. It is no more their province than it is that of life offices to provide sanatoria or burglary departments to maintain the police. But their position was prejudiced by the fact that in former times the only brigades in existence were those run by the fire offices, and when public authorities took up the question the engines and equipment were handed over to them. In this way the tradition arose that the offices had a responsibility in the matter, and when legislation was introduced empowering public authorities to form brigades it seemed quite a natural proceeding to come down on the offices for a liberal contribution. In this way London and several other large cities, notably Manchester and Liverpool, obtained Acts under which the insurance companies had to pay a fixed quota towards the maintenance of the brigades, varying with the interests they had at stake, e.g. in London the annual contribution is fixed at £35 per £1,000,000 insured.

Apart from these local Acts there was no actual liability for contribution, but with the passing of the Fire Brigade Act of 1938 the maintenance of the brigades became the responsibility of duly appointed authorities and the cost a charge on public funds. These authorities are required to provide adequate facilities to cover the areas under their control and previous restrictions as to areas covered by local brigades have been removed. The organization of the N.F.S. for war time needs caused a temporary suspension of independent brigades, but the Fire Sevices Bill, 1947, is designed once more to transfer responsibility to local authorities. This is a reform long overdue and one which should be reflected in a not inconsiderable improvement in the loss ratio, particularly in the case of such risks as country mansions, often at the mercy of some

ill-equipped village brigade whose *amour propre* forbade it to ask for help until things had gone too far.

Salvage corps are purely a concern and creation of the fire offices. Their function is primarily the reduction of loss to the companies by the salvage of goods, prevention of water damage and protection of the companies' interests generally. Incidentally they often render valuable assistance to the brigades. In Liverpool the corps has done very important work in connection with the registration and classification of cotton and other warehouses.

Floating Insurances.

The public can never understand the reluctance of insurers to grant floating policies, or the relatively high rates charged for them. It seems such a simple proposition to cover goods " in the United Kingdom " without restriction, when the difficulties of arriving at a rate which will be anywhere near correct and of fixing a retention are not appreciated. The old idea of charging the rate of the most hazardous risk in which the property could go is by now well on the way to being abandoned in favour of striking some sort of average over the whole range. This system is, however, not without its drawbacks. Firms which have goods customarily stored in a warehouse with a heavy rate can sometimes secure an advantage by taking out a floater at the lower (averaged) rate, and retention is as much a bugbear as ever. The extent of one's commitments in an individual warehouse to which a number of floaters apply must always be a matter of concern to underwriters in view of the fluctuations which are constantly occurring. Generally speaking, losses under floaters are not beyond expectation, but instances have occurred, more than once, where an unfortunate combination of circumstances has landed the insurers in a loss quite disproportionate to what might have been expected. It is not remarkable then that a reduction in rates for this class of business, unaccompanied as it is by any reduction in the uncertainty of results, has not been received in the business with enthusiasm. We will not refer here to difficulties in settlement as between floating and specific insurances : the matter is mentioned in Chapter II under the question of contribution.

The foregoing remarks apply more particularly to mercantile insurances. When we turn to the "works floater," covering stock in all or any of the buildings of an individual firm, we do not find much cause for congratulation. Here again the averaged rate idea is gaining ground, and here again retentions have to be carefully reconsidered and probably cut down on the introduction of the floating item into the insurance. The basis on which the rate is fixed depends in some cases on the amounts in the various buildings at stocktaking and this may well operate adversely to the insurers as the tendency will probably be for goods to accumulate at that time in the warehouse sections of the risk where the lower rates obtain.

One feels that, on the whole, recent developments in practice are unfair to insurers. It is quite right, and very sound, to meet public requirements, but the position of one of the parties in this case is unduly prejudiced, whilst the other party gains not only in convenience but in a reduction in charges.

Policy Drafting.

It is only possible to deal here with this rather technical subject in general terms and to glance at a few matters of interest.

The drafting of all contracts is a matter of importance and the fire insurance contract is often of a very intricate nature. As we saw in Chapter II the policy consists of a printed form containing on the front a statement of the nature of the contract and on the back the conditions under which the contract is further defined, limited or extended, and under which also procedure is laid down for the settlement of claims and other important matters. All this is of general application. On the front of the printed form is left a space for the names of the parties to an individual contract, with the amounts insured and premium payable, particulars of the property, and finally a description of the circumstances of hazard involved. On these circumstances the rating depends, and if they are incorrectly stated in the first place, or altered after the issue of the policy, the rating may cease to be appropriate or the contract may even be rendered void. It is to the construction of this individual part of the document that the term "policy drafting" is generally applied, and it requires for its correct expression a very

considerable amount of skill and experience if the property is to be correctly detailed and the physical nature of the risk clearly and accurately described. In both these matters one has to steer clear of the two extremes of prolixity on the one hand, and incompleteness on the other.

In previous editions adverse criticism has been made of policy-drafting in general, the undue length of wordings employed in the North and Midlands being contrasted with corresponding brevity in London.

Progress in the past twenty years has been most marked and most of the present-day specifications are models of conciseness and clear planning. The increased use of the columnar system and greater uniformity in wordings are all to the common good, and the insured receives a clear picture of the protection afforded by the policy.

The policy-drafter has to plan his work according to the size and nature of the risk insured. In the case of factory premises the words "machine shop" may be enough to identify a building containing a hundred or more machines. Conversely, a small wood-working risk may be described as ". . . containing four benches, an overhand planer, and two circular saws by electric power . . ."

The reasons for different treatment will be apparent. A few machines more or less in the big risk will have no effect on the rate charged whereas an additional machine in the small risk may justify an increase in premium.

Three main factors demand the attention of the policy-drafter—

(i) Property insured.

(ii) Situation or situations of property insured.

(iii) Description of risk.

(i) *Property Insured.* The contents of the great majority of business premises fall naturally into two main categories, the first being the permanent plant fixtures and gear employed in trade or manufacture, and the second the stock which passes through in the form of raw materials or finished products.

This natural division has the advantage of corresponding to the customary method of book-keeping and translated into terms suitable for insurance may be described as follows—

Item 1. Plant and machinery of every description, fixtures, fittings, and utensils, office furniture, and equipment.

Item 2. Stock and materials in trade.

Under the first item landlord's fixtures and fittings forming part of the building are in some cases specifically excepted. It has also become the practice to include an "other contents" clause to specifications detailing (often extensively) further property not within the range of the wording of this item. Alternatively, the words "and all other contents, except stock and materials in trade, property more specifically insured and property excepted by condition 3 (*b*) of the policy" are added to the item itself.

The policy-drafter should never lose sight of the other end of the contract—its performance on the settlement of a loss—and the wording of individual items must avoid the possibility of cover overlapping.

(ii) *Situation.* This limits the range of cover and clear identification of buildings is essential. Similarly any limitations within the area to which a floating item applies must be clearly set out.

(iii) *Description of Risk.* Under this broad heading falls details of construction, lighting, heating, and power, trade processes, also amplifications and limitations of cover.

It is the collection of information on these points conveyed in the policy wording that controls the rates charged and sets out as briefly as possible the true nature of the risk.

The art of policy-drafting can be acquired only with the aid and in the light of experience, but experience alone is quite insufficient.

What is required of the policy-drafter is the cultivation of the difficult art of clear and concise statement, of the instinct for grasping essentials and brushing aside trivialities, also the determination to ignore conventions where little or no good purpose is served by them.

A full working knowledge of the contract is indispensable for the written word over-rides the printed terms and conditions, any ambiguity in the policy being construed always in favour of the insured. This is reasonable as the insured has no part in the framing of the contract.

The advent of the collective policy will do much to lead farther towards concise and uniform wordings which are the product of

long experience. It will be noted that the wordings of some consequential loss policies are inclined to be lengthy and often confusing to the layman. Here again experience must lead towards simplification without loss of strength.

Rent.

For many years it has been customary to insure against loss under this heading, although at its inception the idea was no doubt received by insurers with considerable suspicion owing to the fact that the subject of insurance was not of a material nature. On further reflection it would become apparent that, as a loss could be incurred only in the event of the fire being serious in extent, such a subject was really of a decidedly attractive nature and the rent item became, and has remained, the cream of the risk from the insurer's point of view.

In insurance against loss of rent two different contingencies are dealt with, the one being loss sustained by a tenant through the liability to pay rent for premises which have become untenantable through fire, the other loss by a landlord where his tenant is not under such a liability. Both forms of insurance have been extended of late years, the former to cover hotel expenses during the period of untenantability—rather a desirable corollary if all one's furniture is burnt—the latter to cover loss of income from premises let at a " furnished rental."

It should be noted that under the Common Law in England a tenant is liable to continue the payment of his rent whether the premises rented are tenantable or not. (In Scots Law the reverse holds good.) The provision in a lease that there shall not be such a liability is not uncommon and is known as a " cesser of rent."

Rent items are invariably made subject to a special clause under which it is usually stipulated (1) that there shall be no liability on the insurers unless the premises are actually untenantable and (2) that the premises shall be made tenantable again within reasonable time. The following is a common variety—

RENT CLAUSE. The company shall only be liable for rent in the event of the said building being destroyed or so damaged as to be untenantable, and then only for such a portion of the annual rent as is equivalent to the time necessary for the reinstatement of the building.

The clauses of some companies are so framed as to introduce the

principle of average, the sum insured being deemed to be the actual annual rent (or other period as specified) and the loss payable becoming such a proportion of the sum insured as the period of untenantability bears to the period of insurance specified.

In normal circumstances the period of rent insured seldom exceeds twelve months, this being ample time in most cases within which to rebuild the property concerned.

Cover is required occasionally for longer periods in order to secure full protection for the insured under the terms of a lease.

In a recent case the insured occupied premises on a twenty-one year lease with the option to terminate after seven and fourteen years. There was, however, no "cesser of rent" clause, and consequently in the event of the premises being destroyed by fire the insured was liable to pay rent for the balance of the seven year term remaining even if the building was not reconstructed during this time.

The proposal was met by the issue of a policy covering seven years' rent, the period of rent and sum insured to be reduced proportionally at each subsequent renewal.

The Functions of the Fire Insurance Surveyor and the Uses of Plans and Reports.

The prime function of the fire insurance surveyor is to furnish the underwriter with a plan and report of a risk proposed for insurance through the medium of which the latter may decide the terms, if any, at which the business is acceptable and the amount to be retained.

The term "fire insurance surveyor" is perhaps a misnomer, for many contingencies, some bearing no relationship to the risk of fire, call for attention in the course of his duties.

By means of observation and tactful inquiry the surveyor has to weigh up the hazards of a risk and without incompleteness confine his remarks as briefly as possible to important details that will influence the judgment of the underwriter.

Modern industry demands much of the fire surveyor, and although his knowledge is acquired largely on the hard road of experience he has to be something of a chemist and physicist to keep abreast

with the hazards inherent in new materials and processes in workshops and factories.

His field of operation ranges from the cabinet maker to the confectioner, from the gown shop to the glue factory, and he has to be familiar with the salient features of each.

By means of the surveyor's plan the underwriter is able by following the outlines and recognized symbols to make a quick study of constructional details, the position of hazardous tenancies and to form judgment on the extent to which an outbreak of fire may spread.

Similarly the surveyor's plan provides clear identification of buildings and enables the policy-drafter to group buildings under the various items of a specification.

The physical hazards dealt with, the fire surveyor turns his attention to abstract features eliciting information if required on the proposer's past insurance history and his character.

In addition to making a report on a risk as he sees it the surveyor may make recommendations for the minimization of certain hazards which are a valuable contribution towards reduction in fire wastage.

The acceptance of a proposal is sometimes made subject to the proposer carrying out improvements suggested by the surveyor or remedying defects.

The development of the fire surveying service which involves periodical re-inspections has without doubt promoted good relationships between insurers and insured. Frequently the fire surveyor acts as the only direct personal contact between the parties.

Law and Practice Relating to Fire Insurance Claims.

Approach the subject of Fire Insurance Principles and Practice from any angle, and one finds that the underlying thought on all occasions is the ultimate performance of the contract.

In Chapter II we followed a certain path in considering the terms and conditions of the ordinary fire policy, and it will be observed that in effect, the ground with which we have become familiar is covered again step by step in the investigation and settlement of a claim.

Imagine then that a serious fire has occurred and that intimation of a claim has been given to the insurer.

First it will be confirmed that the claimant is the party or one

of the parties named in the policy as "the insured," and that premium to the next due date has been paid.

The insured is then required to prepare and present a detailed claim in the manner laid down in Condition 4, and meantime the insurer will appoint an assessor to inspect and report upon the extent of the damage, to confirm that the fire was not caused by any of the excepted perils (Policy preamble) and to take any steps to protect the property against further damage.

Acting as the insurer's representative the assessor may enter and if necessary take and keep possession of the damaged property or arrange for the removal and protection of salvage in pursuance of the rights established by Condition 7.

All this and more can be carried out without admission of liability or prejudice to the insurer's right subsequently to rely upon any conditions of the policy.

If liability is in doubt at the outset it is customary, however, to notify the insured that the claim will be examined "without prejudice."

On receipt of the assessor's preliminary report the insurer will know whether or not the damaged property and the situation at which the fire occurred answer to the description in the policy.

The stage has now been reached when the settlement of the claim presents three aspects for consideration—

(*a*) The insured's right of recovery.

(*b*) The amount recoverable.

(*c*) The insurer's rights of subrogation and contribution.

Taking these in the order given we have shown that the fire policy is a contract of indemnity to which two implied conditions attach—insurable interest and good faith.

The policy states that the insurer will ". . . pay to the insured the value of the property at the time of the happening of its destruction or the amount of such damage . . ."

This, however, is not all! The true subject-matter of the policy is the insured's interest in the property insured rather than the property itself, and to possess an insurable interest entitling him to recover under the policy the insured must show that he benefited from the existence of the property, and is prejudiced by its destruction or damage. Otherwise he cannot sustain a loss.

The need for the observance of good faith is shown by Conditions 1 and 2 (misdescription, alteration, etc.), together with Condition 4 (proof of loss), 5 (fraud), 7 (insurers' rights on the happening of a loss), and 11 (arbitration); these conditions include provisions under which the insured's rights of recovery may be forfeited or prejudiced.

The amount recoverable, which in no case may exceed the sum insured—the limit of the insurer's liability—is either the value of the property at the time of the loss if destroyed or the amount of the damage.

This may be varied by the terms of the policy if, for example, the property is insured on a replacement basis or if the insurance is subject to any condition of average by inclusion in the written portion of the policy or by importation under the provisions of Condition 8 or is subject to an excess.

The principle of indemnity which governs the amount recoverable receives further support by the provisions of Condition 6 (reinstatement at the will of the insurer).

The insured's right to recover having been established and the amount of the loss under the terms of the policy agreed, settlement may be affected by contribution (Condition 8) so that liability is fairly proportioned or by subrogation (Condition 9) in order that steps may be taken to recover from any party primarily responsible for the destruction or damage.

It is seldom necessary, however, to subject claims to so close an analysis. The great majority are of a straightforward character, and of the remainder few result in arbitration proceedings, still less reach finality in the Courts.

Generally speaking the insurer is content to apply a broad meaning to the contract, and in "border-line" cases either liability is admitted or payment made, on an "ex-gratia" basis.

It must be noted that if an insurer decides to make an "ex-gratia" settlement, recovery can be secured from treaty re-insurers but except by prior assent co-insurers and facultative re-insurers are not bound by the action of the leading office.

The literal interpretation of the fire policy is not relied upon, for if so firemen would be restrained in their efforts, as damage caused by their axes and water used in extinguishment would not be within

the protection of the policy. In the same way if rioters set fire to a building and the flames spread to adjoining property it might be claimed that the latter was involved not by the action of the rioters but merely by flames from the first building.

Proximate cause, a legal doctrine which is a study in itself, enables liability under the policy to be determined. Thus in the first example the natural consequence of an outbreak of fire is to extinguish it, and clearly damage occurring as a result of such efforts, even though they may be over-zealous, must be within the protection of the policy. If a wind springs up during a fire, obviously payment cannot be reduced on the grounds that less damage would have occurred had conditions remained calm.

In the second example, if the first fire is an "excepted" fire then equally so will be others arising from it.

The proximate cause is therefore the dominant factor in determining liability, and remains so unless and until a break occurs in the natural sequence of events by the introduction of a fresh cause.

This was clearly illustrated in *Tootal Broadhurst Lee Co., Ltd.* v. *London and Lancashire Fire Insurance Co.*, 1907, which concerned a conflagration arising from a fire following an earthquake (an excepted peril and the proximate cause). Justice Bigham in his address to the jury explained that if the original fire was an excepted fire then all further damage occurring as a natural consequence of it was equally excepted. If, however, a firebrand was taken from a burning building and thrown into one not in immediate danger from the conflagration, the chain of events would be broken by the deliberate act of an incendiary.

The student is recommended to study case-law on this and other aspects of claim settlement.

APPENDICES

APPENDIX I

PROPOSAL FOR FIRE INSURANCE

NAME in full..

ADDRESS...

PROFESSION OR OCCUPATION...

SITUATION OF PROPERTY..

CONSTRUCTION—*Walls*..................................... *Roof* ....

BUSINESS OR TRADE carried on...

On the Building	
On Stock and Utensils in trade therein	£
On Goods in trust or on commission for which Proposer is responsible therein	£
On Fixtures and Fittings (excluding Plate Glass and Plate Glass Fronts) therein	£
On Plate Glass and Plate Glass Fronts therein	£
On Machinery Shafting and Gearing (excluding Engines, Boilers, and Electrical Plant) therein . . .	£
On Engines and Boilers therein	£
On Electrical Plant therein	£
On.. therein	£

....

....

On Household Goods, and Personal Effects of every description (other than those mentioned at foot hereof), the property of the Proposer or (provided it be not otherwise insured) of such members of Proposer's Family or Domestic Servants as permanently reside with the Proposer, in private use therein. . . . (No one Picture, Print or Engraving in case of loss to be valued at more than £...............)	£
On..	£
On the Building of the Stables, Coach-house and Offices, under one roof or communicating with, or near to the said..............................constructed of.. roofed with..	£
On Horses (no one Horse in case of loss to be valued at more than £.............), Harness, Carriages and other Vehicles (Motor Vehicles excepted), Stable Utensils and Fodder therein	£

On Motor Vehicles therein, viz. :..

On Outbuildings,[1] viz. :.. £

On.. £

.... £

[1] *A separate sum must be given in respect of each separate Building, and of the Contents thereof, and the Construction of each must be stated.*

On One Year's Rent of said.. £

On Architect's and Surveyor's Fees for Plans, Specifications, Quantities, Tenders and Services necessarily incurred in the re-instatement of the Building after the occurrence of a Fire (not to exceed $7\frac{1}{2}$ per cent of the amounts on the Buildings) . . . . £

£

NOTE.—*Money, Securities, Documents and Business Books are not covered. Goods held in trust or on commission, Explosives, Manuscripts Stamps Patterns Models Moulds Designs Plans and Drawings are only covered if specially insured.*

---

1. Is any method of Heating otherwise than by ordinary Fire Grates or Gas Fires employed in above-mentioned Buildings? If so, give particulars ....
2. How are the buildings lighted? ....
3. Are the premises in your sole occupation? If otherwise, state particulars . . . .
4. How are the Adjacent premises occupied? ....
5. How long have you carried on business in these premises? ....
6. Have you carried on business in any former premises, and where? ....
7. Have you previously been or are you now insured with any other Office? If so, state name of Office. . . . .
8. Have you ever had a Fire either at these premises or elsewhere? If so, state particulars. ....
9. Has any Office declined any proposal of yours for Insurance or declined to continue any Insurance of yours? ....

Proposer's Signature..

.... *Date*..

If any Petroleum or other Mineral Oil or Liquid Product thereof be kept on the Premises, particulars must be given as to quantity and storage.

APPENDIX II

PROTECTION NOTE

.... 19 ....

.... *of* ....

....*having made a proposal to the* ....*ASSURANCE COMPANY, Limited, for Insurance against Fire for £*..

on—

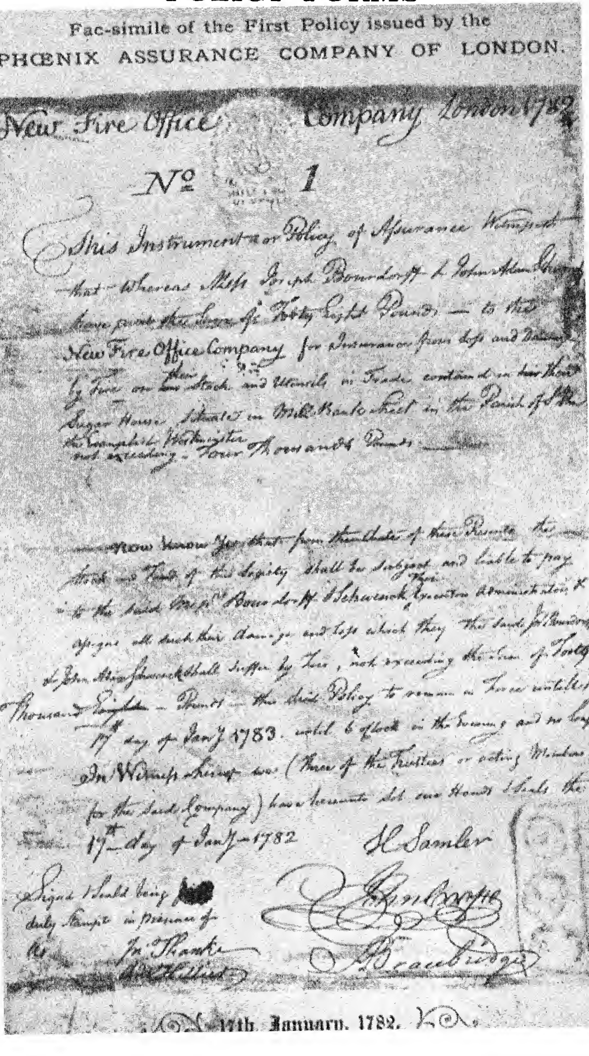
according to particulars furnished to the Company, the Company hereby undertakes the said Insurance from the ....19 *until*..19 *subject to the payment of the Premium and to the Conditions endorsed or otherwise expressed hereon, but the Company may determine the Insurance at any time by giving notice to the Insured, or the Person by or through whom the proposal is made, that it is declined.*

Deposit received £..............................

Fire Manager.

[NOTE.—On the back are printed the usual Policy conditions.]

APPENDIX III (*a*)
POLICY FORMS



Fac-simile of the First Policy issued by the
PHŒNIX ASSURANCE COMPANY OF LONDON.

New Fire Office Company London 1782

No 1

This Instrument or Policy of Assurance Witnesseth that Whereas Messrs Joseph Bowerdorff & John Adam Schwenck have paid the Sum of Forty Eight Pounds — to the New Fire Office Company for Insurance from Loss and Damage by Fire on their Stock and Utensils in Trade contained in their Sugar House situated in Millbank Street in the Parish of St. John the Evangelist Westminster not exceeding Four Thousand Pounds

Now Know Ye that from the [illegible] of these Presents the Stock and Funds of this Society shall be subject and liable to pay to the said Messrs Bowerdorff & Schwenck their Executors Administrators & Assigns all such their damage and loss which they the said Joseph Bowerdorff & John Adam Schwenck shall suffer by Fire, not exceeding the Sum of Forty Thousand Eight Pounds — the said Policy to remain in Force until the 17th day of Jany 1783 until 6 o'clock in the Evening and no longer

In Witness whereof we (Three of the Trustees or acting Members for the said Company) have hereunto Set our Hands & Seals the 17th day of Jany 1782

H. Samler

[illegible]

[illegible] Beaubridge

Signed Sealed being duly Stampt in presence of us

Jn. Thanke

[illegible]

17th January, 1782.

APPENDIX III (*c*)

FIRE POLICY, 1923 (pre-standard)

This Policy of Insurance Witnesseth, THAT in consideration of the Insured named in the Schedule hereto paying to the..... ....ASSURANCE COMPANY LIMITED (hereinafter called the Company) the first premium in the said Schedule

The Company hereby agrees with the Insured (subject to the terms and conditions annexed to endorsed or otherwise expressed hereon which are to be taken as part of this Policy) that if the property described in the said Schedule, or any part thereof, shall be destroyed or damaged by Fire or Lightning after payment of the premium at any time during the period of insurance named in the said Schedule, or before 4 o'clock in the afternoon of the last day of any subsequent period in respect of which the Insured shall pay to the Company and the Company shall accept the sum required for the renewal of this Policy, the Company will pay or make good all such loss or damage to an amount not exceeding during any one period of insurance in respect of the several matters specified in the said Schedule the sum set opposite thereto respectively and not exceeding in the whole the total sum insured.

SCHEDULE

The Insured *Messrs. F. Smith & Co., Ltd., of Fordington Road, Wakefield, Yorks, Dyers and Cleaners*		Policy No. .. .. Agency ....
The property insured *As set forth in the attached Specification which is to be taken and read as part of this Policy the liability of the Company under this Policy being limited to ten per cent of each of the amounts of the said Specification not exceeding in all the sum of Sixteen thousand two hundred and sixty-seven pounds*		Sum insured.
Total sum insured		£ *16,267*
Period of Insurance From............*24th June, 1923* .... To ....*24th June, 1924* .. .. at Four o'clock in the afternoon.	First Premium *£48 : 12 : 6* .	Annual Premium . *£48 : 12 . 6* .... Due .. .. *24th June* .. ....

Signed this.. ...., on behalf of the.................................ASSURANCE COMPANY LIMITED.

....
Fire Manager.

....
Director

APPENDIX III (*d*)

STANDARD FIRE POLICY, Edition 1923

In consideration of the Insured named in the Schedule hereto paying to the ....ASSURANCE COMPANY LIMITED (hereinafter called the Company) the first premium mentioned in the said Schedule **The Company agrees** (subject to the Conditions contained herein or endorsed or otherwise expressed hereon which Conditions shall so far as the nature of them respectively will permit be deemed to be Conditions precedent to the right of the Insured to recover hereunder) that if after payment of the premium the property insured described in the said Schedule, or any part of such property, be destroyed or damaged by

(1) Fire (whether resulting from explosion or otherwise) *not occasioned by or happening through*
- (*a*) Its own Spontaneous Fermentation or Heating or its undergoing any Process involving the application of Heat,
- (*b*) Earthquake, Subterranean Fire, Riot, Civil Commotion, Foreign Enemy, Military or Usurped Power, Rebellion, or Insurrection,

(2) Lightning,
(3) Explosion of Boilers used for domestic purposes only,
(4) Explosion, in a building not being part of any Gas Works, of Gas used for domestic purposes or used for lighting or heating the building,

at any time before 4 o'clock in the afternoon of the last day of the period of insurance named in the said Schedule or of any subsequent period in respect of which the Insured shall have paid and the Company shall have accepted the premium required for the renewal of this Policy, the Company will pay to the Insured the value of the property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof **Provided that** the liability of the Company shall in no case exceed in respect of each item the sum expressed in the said Schedule to be insured thereon or in the whole the total sum insured hereby or such other sum or sums as may be substituted therefor by memorandum hereon or attached hereto signed by or on behalf of the Company.

SCHEDULE, FORM AS IN III (C)

STANDARD FIRE POLICY, Edition 1938

As 1923 Edition, but Perils (1)—(4) varied as under—

(1) Fire (whether resulting from explosion or otherwise) not occasioned by or happening through:—
- (*a*) Its own Spontaneous Fermentation or Heating or its undergoing any Process involving the application of Heat;
- (*b*) Earthquake, Subterranean Fire, Riot, Civil Commotion, War, Invasion, Act of Foreign Enemy, Hostilities (whether War be declared or not), Civil War, Rebellion, Revolution, Insurrection or Military or Usurped Power;

(2) **Lightning;**
(3) **Explosion,** not occasioned by or happening through any of the perils specified in 1 (*b*) above,
- (i) Of Boilers used for domestic purposes only,
- (ii) In a Building not being part of any Gas Works, of Gas used for domestic purposes or used for lighting or heating the building

APPENDIX III (*e*)

"COMPREHENSIVE" POLICY
(Buildings and Contents)

First Premium £

from..19 *to* 19
at Four o'clock in the afternoon.

Annual Premium £ *payable*.......... ....

Whereas
(hereinafter called the Insured) residing at his Private Dwelling situate

has by a signed proposal and declaration dated which proposal and declaration the Insured has agreed shall be the basis of this Contract and be held as incorporated herein applied to the ASSURANCE COMPANY, LIMITED (hereinafter called the Company), for insurance against the Contingencies specified in the Schedule hereto. **Now This Policy Witnesseth That** in consideration of the Insured paying to the Company for this Insurance the First Premium above mentioned **The Company hereby agrees** (subject to the conditions contained herein or endorsed or otherwise expressed hereon which conditions shall so far as the nature of them respectively will permit be deemed to be conditions precedent to the right of the Insured to recover hereunder) that in the event of any of the said contingencies happening between the dates set forth above or in any subsequent period in respect of which the Insured shall pay to the Company and it shall accept the Premium required for the renewal of this Insurance, the Company will by payment reinstatement or repair indemnify the Insured as hereinafter provided.

CONDITIONS

1. This Policy does not cover any contingency (other than Accidents to Servants under Section III of the said Schedule)—
   (*a*) occasioned by or happening through War, Invasion, Act of Foreign Enemy, Hostilities (whether War be declared or not), Civil War, Rebellion, Revolution, Insurrection or Military or Usurped Power;
   (*b*) in Ireland and Northern Ireland—occasioned by or happening through Riot or Civil Commotion.
2. If at the time of any loss damage or liability arising under this Policy there shall be any other insurance effected by or on behalf of the Insured covering such loss damage or liability or any part thereof the Company shall not be liable for more than its rateable proportion thereof.
3. (*a*) The Insured shall on the happening of any loss or damage to the Property insured give immediate notice thereof in writing to the Company and shall at his own expense within Thirty Days after the happening of such loss or damage deliver to the Company a claim in writing with such detailed particulars and proofs as may be reasonably required. If the Company elect or become bound to reinstate any building, the Insured shall furnish to the Company all such plans, specifications and quantities as the Company may reasonably require. In the case of loss or damage by burglary housebreaking larceny theft or any attempt thereat he shall also give immediate notice to the Police.
   (*b*) The Insured shall on receiving notice of any accident or claim arising under Section III, B, C or D of the said Schedule give immediate notice thereof in writing to the Company and shall supply full particulars thereof in writing and shall send to the Company any writ summons or other legal process issued or commenced against the Insured and shall give all necessary information and assistance to enable the Company to settle or resist any claim or to institute proceedings.
   (*c*) The Insured shall not incur any expense in making good any damage without the written consent of the Company and shall not negotiate pay settle admit or repudiate any claim without the like consent.

4. The Company shall be entitled—

(a) On the happening of any loss of or damage to the property insured to enter any building where the loss or damage has happened and to take and keep possession of the property insured and to deal with the salvage in a reasonable manner and this Policy shall be proof of leave and licence for such purpose. No property may be abandoned to the Company.

(b) To undertake in the name and on behalf of the Insured the absolute conduct control and settlement of any proceedings and to take proceedings at its own expense and for its own benefit but in the name of the Insured to recover compensation or secure indemnity from any third party in respect of anything covered by this Policy.

5. If any claim under this Policy shall be in any respect fraudulent or if any fraudulent means or devices are used by the Insured or anyone acting on his behalf to obtain any benefit under this Policy all benefit thereunder shall be forfeited.

6. Any difference arising between the Company and the Insured shall be referred to the decision of an arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single arbitrator to the decision of two arbitrators one to be appointed by each of the parties in writing or in case of a disagreement of the arbitrators of an umpire to be appointed by the arbitrators in writing before entering upon the reference and the obtaining of an Award shall be a condition precedent to any liability of or right of action against the Company in respect of any such difference.

Signed this day of 19 , on behalf of the

COMPANY.

....

SCHEDULE

SECTION I.—CONTINGENCIES RELATING TO BUILDINGS

A.—LOSS or DAMAGE caused by any of the undermentioned Perils to the Buildings hereinafter specified.

(1) **Fire, Explosion, Lightning, Thunderbolt.**

(2) **Riot, Civil Commotion, Strikes, Labour Disturbances or Malicious Persons acting on behalf of or in connection with any Political Organization,** but excluding all such loss or damage caused in Ireland and Northern Ireland.

(3) **Aircraft** or Articles dropped therefrom.

(4) **Storm** or **Tempest,** excluding—

(i) Destruction or damage caused by Flood, Subsidence or Landslip;
(ii) Destruction of or damage to Fences and Gates, and
(iii) The first £5 of each and every loss.

(5) **Burglary, Housebreaking,** or any attempt thereat.

(6) **Bursting or Overflowing of Water Tanks, Apparatus or Pipes,** excluding the first £5 of each and every loss.

The insurance against Burglary, Housebreaking or any attempt thereat, and Bursting or Overflowing of Water Tanks, Apparatus or Pipes, shall not apply whilst the Private Dwelling House is left unfurnished, and further in the event of the said Private Dwelling House being left without an inhabitant therein for more than 90 days whether consecutively or not in any one term of insurance such insurance shall be entirely suspended in respect of any period or periods during which the Dwelling House may be unoccupied in excess of the aforesaid 90 days.

(7) **Earthquake.**

(8) **Impact with any of the said Buildings by any Road Vehicle, Horses or Cattle** not belonging to or under the control of the Insured or any member of his family.

THE BUILDINGS

	For an amount not exceeding
The Insured's Private Dwelling House aforesaid and all the Domestic Offices, Stables, Garage and Outbuildings on the same premises and used in connection therewith and the Walls, Gates and Fences around and pertaining thereto including Landlord's Fixtures and Fittings in the said Buildings all of which are brick, stone or concrete built with slate, tile or metal roofs except as specially mentioned	£ . . . .
. . . .	£ . . . .
. . . .	£ . . . .
Total Sum Insured	£ . . . .

The total sum insured is declared by the Insured to represent not less than the full value of the aforesaid property and the total liability of the Company in respect of Loss or Damage thereto by all or any of the said Perils during any one period of insurance shall not exceed the amount stated against each item respectively or in the aggregate the above total of . . . . or such other sum or sums as may be substituted therefor by memorandum hereon or attached hereto signed by or on behalf of the Company.

SECTION II.—CONTINGENCIES RELATING TO CONTENTS

A.—LOSS or DAMAGE caused by any of the undermentioned Perils to the Contents hereinafter specified.

(1) **Fire, Explosion, Lightning, Thunderbolt, Earthquake.**

(2) **Storm, Tempest, Flood.**

(3) **Riot, Civil Commotion, Strikes, Labour Disturbances or Malicious Persons acting on behalf of or in connection with any Political Organization,** but excluding all such loss or damage caused in Ireland and Northern Ireland.

(4) **Aircraft** or Articles dropped therefrom.

(5) **Bursting or Overflowing of Water Tanks, Apparatus or Pipes** (excluding damage caused thereto).

(6) **Burglary, Housebreaking,** or any attempt thereat.

(7) **Larceny or Theft**—excluding (*a*) larceny or theft of Cash, Treasury Notes and Bank Notes; (*b*) larceny or theft from the Insured's Private Dwelling House aforesaid and Domestic Offices, Stables, Garage and Outbuildings whilst the said Dwelling House or any part thereof is lent, let or sub-let.

(8) **Impact with any of the said Buildings by any Road Vehicle, Horses or Cattle** not belonging to or under the control of the Insured or any member of his family.

THE CONTENTS

	For an amount not exceeding
Household Goods and Personal Effects of every description (except as aftermentioned)—including Cash, Treasury Notes and Bank Notes to an amount not exceeding £25 or five per cent of the full value of the Contents as herein declared, whichever is the less—belonging to the Insured or to members of his family permanently residing with him and Fixtures and Fittings, the Insured's own or for which he is responsible, not being Landlord's Fixtures or Fittings . . . . (No part of the structure nor ceilings, wall papers or the like are covered under this Section.)	£ . . . .
. . . .	£ . . . .
. . . .	£ . . . .
Total Sum Insured	£ . . . .

The total sum insured is declared by the Insured to represent not less than the full value of the Contents insured hereby and the total liability of the Company in respect of Loss or Damage thereto by all or any of the said Perils during any one period of insurance shall not exceed the amount stated against each item respectively or in the aggregate the above total of.............................. or such other sum or sums as may be substituted therefor by memorandum hereon or attached hereto signed by or on behalf of the Company.

All in the Insured's Private Dwelling House aforesaid and in Domestic Offices, Stables, Garage and Outbuildings being on the same premises and used in connection therewith.

This policy does not cover property more specifically insured or, unless specially mentioned, Deeds, Bonds, Bills of Exchange, Promissory Notes, Cheques, Securities for Money, Stamps, Documents of any kind, Manuscripts, Medals and Coins, Motor Vehicles and Accessories, or Live Stock other than Horses.

No one Article (Furniture, Pianos and Organ excepted) shall be deemed of greater value than five per cent of the full value of the Contents as above declared, unless such article is specially insured in a separate item.

The total value of Gold and Silver Articles, Jewellery and Furs shall be deemed not to exceed one-third of the full value of the Contents as above declared, unless specially agreed herein.

UNOCCUPANCY CLAUSE.

In the event of the Insured's Private Dwelling House aforesaid being left without an inhabitant therein for more than 90 days whether consecutively or not in any one term of insurance the insurance against Loss or Damage by Burglary, Housebreaking, Larceny, Theft or any attempt thereat shall as regards Loss or Damage to the Contents of the said Private Dwelling House, Domestic Offices, Stables, Garage and Outbuildings, be entirely suspended in respect of any period or periods during which the Dwelling House may be unoccupied in excess of the aforesaid 90 days.

EXTENSIONS.

If and so far as the said Contents are not otherwise insured this Policy extends, except as regards property removed for sale or exhibition or to Furniture Depositories and subject in every case to the exclusions and limitations hereinbefore specified, to cover the same whilst temporarily removed but remaining in Great Britain, Ireland, or Northern Ireland, against—

(1) **All** the said **Perils** excluding—
  (*a*) **Storm, Tempest** or **Flood** as regards property in transit or on the person, and
  (*b*) **Larceny** or **Theft** except as aftermentioned.
(2) **Larceny** or **Theft** (in respect of property other than Cash, Treasury Notes and Bank Notes)
  (*a*) at any Bank, Safe Deposit or occupied Private Dwelling;
  (*b*) in any building where the Insured or any member of his family is residing;
  (*c*) in course of removal to or from any Bank or Safe Deposit whilst in charge of the Insured, a member of his family, or authorized servant.

The amount recoverable under these extensions in the event of Loss or Damage by Fire, Explosion, Lightning, Thunderbolt or Earthquake shall in no case exceed 15 per cent of the full value of the Contents as above declared.

B.—SERVANTS' GOODS.

Loss or Damage caused by the said Perils to Clothing and Personal Goods (other than Cash Treasury Notes and Bank Notes) of the Insured's Domestic Servants if and so far as such property is not otherwise insured whilst in the Insured's Private Dwelling House aforesaid or any Private Dwelling, Boarding House, Lodging House, Hotel or Inn in Great Britain, Ireland, or Northern Ireland, in which such Servants are residing with the Insured or any member of his family as aforesaid.

C.—DAMAGE TO MIRRORS.

Damage to Mirrors, other than hand Mirrors, by breakage thereof whilst in the Insured's Private Dwelling House aforesaid.

SECTION III.—OTHER CONTINGENCIES

A.—LOSS OF RENT.

Loss of Rent in respect of the Insured's Private Dwelling House aforesaid and reasonable additional expense necessarily incurred by him at an Hotel,

Lodging House or Boarding House in consequence of the said Private Dwelling House being so damaged by any of the Perils specified in Section II A as to be rendered uninhabitable but only in respect of the period necessary for reinstatement and not exceeding—

(1) in respect of rent 10 per cent of the full value of the Buildings as declared in Section I A and
(2) in respect of said expense 10 per cent of the full value of the Contents as declared in Section II A.

B.—ACCIDENTS TO SERVANTS.

Claims (including Costs) under or by virtue of

All Workmen's Compensation and Employers' Liability Acts in force at the date of the original issue of this Policy, the Fatal Accidents Act, 1846, the Accidental Deaths Act (Isle of Man), 1852, and the Common Law,

in respect of any personal injury occurring during the continuance of this Policy to any Domestic Servant (including grooms coachmen and gardeners and temporary and occasional employees but not chauffeurs) whilst in the employ of the Insured in connection with the Insured's Private Dwelling House aforesaid or other temporary residence in Great Britain, Ireland, or Northen Ireland.

EXTENSION OF BENEFITS.

The amount payable hereunder will be increased, except for temporary and occasional employees, to such a sum as will be equivalent to—

Full wages and the cost of board and lodging (the cost of board and lodging to be calculated at not more than 10s. per week) in respect of any period not exceeding one month from the commencement of disablement during which such Domestic Servant is totally disabled from work as the result of personal injury by accident arising out of and in the course of the employment.

In addition the Company will repay to the Insured reasonable medical and surgical expenses in connection with such injury but not exceeding £5 in respect of any one accident.

C.—LIABILITY TO THE PUBLIC.

Claims made on the Insured—

(a) as owner of the said Buildings in respect of accidents directly caused by any defect in the Buildings aforesaid or in the Landlord's Fixtures and Fittings or in the Walls, Gates, Fences and Trees around and pertaining thereto,
(b) as a private householder occupying the said Private Dwelling House in respect of accidents happening in or about the Buildings aforesaid,

resulting in—

(1) bodily injury to any person not being a member of the Insured's family or household nor at the time of sustaining such injury engaged in the service of the Insured,
(2) damage to property not belonging to or in the charge or under the control of the Insured or of a member of his family or household or of a person in his service.

Provided always that the amount payable hereunder in respect of any one accident or series of accidents constituting one occurrence shall not in any case exceed the sum of £1,000 in addition to—

(a) costs and expenses recoverable from the Insured by any claimant provided such costs and expenses were incurred before the date (if any) on which the Company shall have paid or offered to pay either the full amount of the claim or the total amount recoverable in respect of any one occurrence as hereinbefore provided,
(b) costs and expenses incurred by the Insured with the consent of the Company.

Claims are excluded—

(i) in respect of injury or damage arising out of or incidental to the Insured's profession or business or the use of lifts or vehicles,
(ii) against the Insured, as owner of the buildings aforesaid, in respect of damage to surrounding property caused by subsidence,
(iii) in respect of liability arising out of any contract of indemnity which imposes upon the Insured liability which the Insured would not otherwise have been under.

In the event of the death of the Insured the Company will in respect of the liability incurred by the Insured indemnify the Insured's personal representatives in the terms of and subject to the limitations of Section III C provided that such personal representatives shall as though they were the Insured observe, fulfil and be subject to the terms, exceptions and conditions of the Policy so far as they can apply.

For the purposes of Section III C the expression "the Insured" shall be deemed to include the husband or wife of the Insured.

D.—COMPENSATION FOR DEATH OF THE INSURED.

In the event of fatal injury to the Insured occurring in his Private Dwelling House aforesaid occasioned by outward and visible violence caused by Burglars or Housebreakers or Fire (provided that in the last mentioned event a Fire Brigade attends or is summoned) the Company will pay the sum of £1,000 or one-half of the full value of the Contents as declared in Section II A whichever is the less provided death ensues within three calendar months of such injury. The liability of the Company under this item during any period of insurance is limited to the said sum of £1,000 or one-half of such full value whichever may be the less.

NOTE. Other forms are in use to meet the varied requirements of the Insured. Printing difficulties preclude their being given here, but Offices will no doubt supply specimen copies.

APPENDIX III (f)

GARAGE-KEEPERS' PUBLIC LIABILITY POLICY

WHEREAS the Insured named in the Schedule below carrying on the business therein stated and no other for the purposes of this Insurance by a Proposal and Declaration dated as stated in the said Schedule which shall be the basis of this Contract and is deemed to be incorporated herein has applied to the.................... ASSURANCE COMPANY LIMITED (hereinafter called "the Company") and has paid or agreed to pay the first premium stated herein as consideration for the indemnity hereinafter contained in respect of loss or damage occurring during the period of insurance named in the said Schedule and ending at four o'clock in the afternoon on the last day of the said period or during any period for which the Company may accept payment for the renewal of this Policy.

Now this Policy Witnesseth that the Company will, subject to the terms exceptions and conditions contained herein and of any endorsements hereon, indemnify the Insured against:—

(*a*) All sums which the Insured shall become legally liable to pay as compensation and claimants' costs and expenses for loss or damage by fire and/or explosion of or to any motor vehicle (including lamps tyres and accessories belonging thereto) held in trust by or in the custody or control of the Insured or whilst being attended to by the Insured or his employees in on or about the premises other than the property of any Member of the Insured's family or household or of any employee of the Insured or property for which he has expressly accepted responsibility, and actually caused or sustained in on or about the premises specifically mentioned in the Schedule of this Policy through the fault or negligence of the Insured or any employee of the Insured or any other persons lawfully on such premises, or by or through any defect in the ways works machinery or plant of the Insured connected with or used in the Insured's business in on or about such premises.

(*b*) Litigation expenses incurred with the written consent of the Company in defending any claim for compensation as aforesaid, provided always that the Company reserves the right at any time to relieve itself of any further liability on account of such litigation expenses upon paying the amount of the Company's liability stated hereunder together with the litigation expenses incurred by the Company to the date of payment.

Provided always

(1) That the Company shall not be liable in respect of any one fire or explosion for a greater sum than £...

(2) That the Company shall not be liable for any loss or damage occasioned by or happening through War, Invasion, Act of Foreign Enemy, Hostilities (whether War be declared or not), Civil War, Rebellion, Revolution, Insurrection or Military or Usurped Power.

(3) That the Company shall not be liable for any loss or damage to property occasioned by its undergoing any process involving the application of heat.

Memo: The premium charged for this Insurance is based upon the Garage Capacity of the premises mentioned in the Schedule as declared by the Insured in the Proposal referred to above and the Insured hereby undertakes to inform the Company immediately any extension or alteration is made to the said premises and to pay any additional premium which may in consequence be required by the Company for the continuance of this Insurance.

SCHEDULE

THE INSURED		
THE BUSINESS		
THE PREMISES		
Proposal and Declaration dated	Garage Capacity Cars. Limit of Liability for any one Fire or Explosion £	Policy No. Agency
Period of Insurance From To	First Premium £	Annual Premium £ Due

Signed this..... .. .. day of .. .. 19.. for and on behalf of the Company.

APPENDIX III (*g*)

VALUATION CLAUSE (Valuation used as basis only)

CERTAIN articles insured by this Policy are specified in the Inventory and Valuation prepared and signed by ....and dated the..a copy of which is deposited with the Company and it is agreed that the sum set opposite each item of such Inventory has been accepted by the Company and the Insured as being evidence of the value of such property on the date of the Valuation and in the event of destruction or damage the production of invoices or other evidence of cost will not be required in respect of such items. Such values will, however, be subject to reasonable allowance for depreciation or appreciation at date of loss; provided that in no case shall the liability of the Company exceed the total sum insured by the policy, namely, £ .

APPENDIX III (*h*)

"REINSTATEMENT" WORDING

MEMORANDUM. It is hereby agreed that in the event of the property insured under (Item(s) No(s)................of) the within policy being destroyed or damaged the basis upon which the amount payable under (each of the said Items of) the policy is to be calculated shall be the reinstatement of the property destroyed or damaged, subject to the following special provisions and subject also to the terms and conditions of the policy except in so far as the same may be varied hereby.

For the purposes of the insurance under this memorandum "reinstatement" shall mean—

The carrying out of the aftermentioned work, namely,

(*a*) Where property is destroyed, the rebuilding of the property, if a building, or, in the case of other property, its replacement by similar property, in either case in a condition equal to but not better or more extensive than its condition when new.

(*b*) Where property is damaged the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same as but not better or more extensive than its condition when new.

SPECIAL PROVISIONS

1. The work of reinstatement (which may be carried out upon another site and in any manner suitable to the requirements of the Insured subject to the liability of the Company not being thereby increased) must be commenced and carried out with reasonable dispatch and in any case must be completed within twelve months after the destruction or damage or within such further time as the Company may (during the said twelve months) in writing allow; otherwise no payment beyond the amount which would have been payable under the policy if this memorandum had not been incorporated therein shall be made.

2. When any property insured under this memorandum is damaged or destroyed in part only the liability of the Company shall not exceed the sum representing the cost which the Company could have been called upon to pay for reinstatement if such property had been wholly destroyed.

3. No payment beyond the amount which would have been payable under the policy if this memorandum had not been incorporated therein shall be made until the cost of reinstatement shall have been actually incurred.

4. Each Item insured under this memorandum is declared to be separately subject to the following Condition of Average, namely—

If at the time of reinstatement the sum representing the cost which would have been incurred in reinstatement if the whole of the property covered by such Item had been destroyed, exceeds the sum insured thereon at the breaking out of any fire or at the commencement of any destruction or damage to such property by any other peril hereby insured against, then the Insured shall be considered as being his own insurer for the excess and shall bear a rateable proportion of the loss accordingly.

5. No payment beyond the amount which would have been payable under the policy if this memorandum had not been incorporated therein shall be

made if at the time of any destruction or damage to any property insured hereunder such property shall be covered by any other insurance effected by or on behalf of the Insured which is not upon the identical basis of reinstatement set forth herein.

6. Where by reason of any of the above special provisions no payment is to be made beyond the amount which would have been payable under the policy if this memorandum had not been incorporated therein the rights and liabilities of the Company and the Insured in respect of the destruction or damage shall be subject to the terms and conditions of the policy, including any Condition of Average therein, as if this memorandum had not been incorporated therein.

APPENDIX IV

THE RAILWAY FIRES ACT, 1905 (AND AMENDMENT ACT, 1923)

A.D. 1905.

An Act to give Compensation for Damage by Fires caused by Sparks or Cinders from Railway Engines.

[4th August 1905.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows—

Liability of railway companies to make good damage to crops by their engines.

1.—(1) When, after this Act comes into operation, damage is caused to agricultural land or to agricultural crops, as in this Act defined, by fire arising from sparks or cinders emitted from any locomotive engine used on a railway, the fact that the engine was used under statutory powers shall not affect liability in an action for such damage.

(2) Where any such damage has been caused through the use of an engine by one company on a railway worked by another company, either company shall be liable in such an action; but, if the action is brought against the company working the railway, that company shall be entitled to be indemnified in respect of their liability by the company by whom the engine was used.

(3) This section shall only apply in the case of any action for damage where the claim for damage in the action does not exceed one hundred pounds.[1]

Powers for extinction and prevention of fire.

2.—(1) A railway company may enter on any land and do all things reasonably necessary for the purpose of extinguishing or arresting the spread of any fire caused by sparks or cinders emitted from any locomotive engine.

(2) A railway company may, for the purpose of preventing or diminishing the risk of fire in a plantation, wood, or orchard through sparks or cinders emitted from any locomotive engine, enter upon any part of the plantation, wood, or orchard, or on any land adjoining thereto, and cut down and clear away any undergrowth, and take any other precautions reasonably necessary for the purpose; but they shall not, without the consent of the owner of the plantation, wood, or orchard, cut down or injure any trees, bushes, or shrubs.

(3) A railway company exercising powers under this section shall pay full compensation to any person injuriously affected by the exercise of those powers, including compensation in respect of loss of amenity, and any compensation so payable

[1] Now increased to £200.

shall, in case of difference, be determined in England and Ireland by two justices in manner provided by section twenty-four of the Lands Clauses Consolidation Act, 1845, and in Scotland by the sheriff in manner provided by section twenty-two of the Lands Clauses Consolidation (Scotland) Act, 1845.

A.D. 1905.

8 & 9 Vict. c. 18.

8 & 9 Vict. c. 19.

Notice of claim.

3. This Act shall not apply in the case of any action for damage by fire brought against any railway company unless notice of claim and particulars of damage, in writing, shall have been sent to the said railway company within seven days of the occurrence of the damage as regards the notice of claim, and within fourteen days as regards the particulars of damage.

Definitions and application.

4. In this Act—

The expression "agricultural land" includes arable and meadow land and ground used for pastoral purposes or for market or nursery gardens, and plantations and woods and orchards, and also includes any fences on such land, but does not include any moorland or buildings:

The expression "agricultural crops" includes any crops on agricultural land, whether growing or severed, which are not led or stacked;

The expression "railway" includes any light railway and any tramway worked by steam power.

This Act shall apply to agricultural land under the management of the Commissioners of Woods, and to agricultural crops thereon.

Short title.

5. This Act shall come into operation on the first day of January one thousand nine hundred and eight, and may be cited as the Railway Fires Act, 1905.

Under the Railway Fires Act (1905) Amendment Act, 1923, which received the Royal Assent on the 31st July, and came into force as from that date, the following changes were made—

1. Amendment of 5 Edw. 7, c. 11 s. 1 (3).]—Subsection (3) of section one of the Railway Fires Act, 1905 (hereinafter called the principal Act), shall be amended by the substitution of the words "two hundred pounds" for the words "one hundred pounds" in the said subsection.

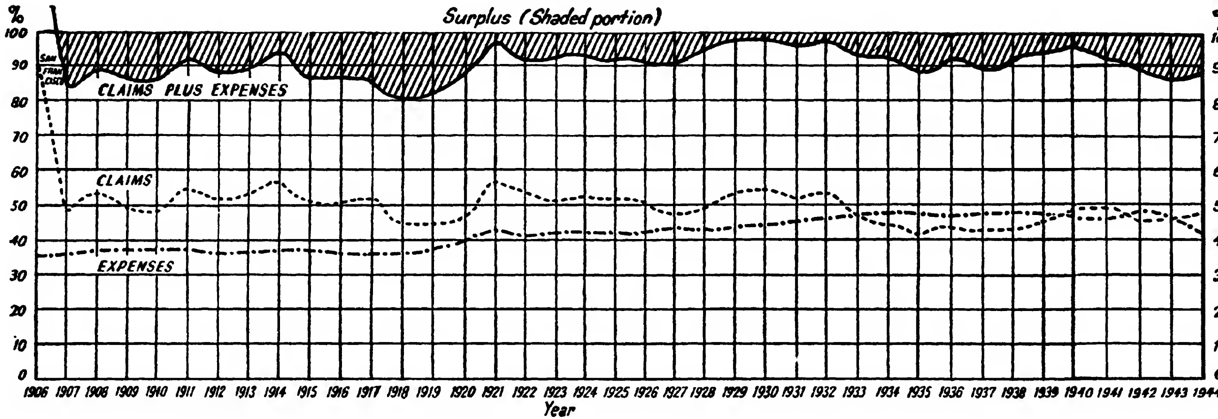
2. Conditions precedent to application of principal Act.]—The principal Act shall not apply in the case of any action for damage by fire brought against any railway company unless (1) notice in writing of the fire having occurred and of intention to claim in respect thereof shall have been sent to the said railway company within seven days of the occurrence of the damage; and (2) particulars in writing of the damage showing the amount of the claim in money not exceeding the said sum of two hundred pounds shall have been sent to the said railway company within twenty-one days of the occurrence of the damage.

3. Repeal of s. 3 of principal Act.]—Section three of the principal Act is hereby repealed.

4. Act not retrospective.]—This Act shall not apply in the case of any fire which has occurred before the passing of this Act

5. Short title.]—This Act may be cited as the Railway Fires Act (1905) Amendment Act, 1923.

APPENDIX V



BRITISH FIRE INSURANCE, 1906–1944. PERCENTAGE OF CLAIMS AND EXPENSES TO PREMIUMS

Based on figures published in *The Policy Holder*, 30th Oct., 1929, and on subsequent articles

Note steady fluctuations in Loss Ratio since peak year of San Francisco in 1906, and steady rise in Expense Ratio.

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